

## FROM STATUTES TO SURVIVAL: REGULATING ENDANGERED WILDLIFE CONSERVATION IN MALAYSIA

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### ABSTRACT

According to the World Wildlife Fund (WWF)'s Living Planet Report 2024, there is an average decline of 73% in wildlife species populations between 1970 and 2020. While conservation efforts aid in saving some wildlife species, urgent action is required if these losses are to be reversed. The impact of the decline in wildlife goes far beyond the potential cultural loss. In fact, countries losing wildlife species are set to suffer from ecological problems that result in loss of biodiversity, which can lead to economic crisis. Wildlife around the world, including

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Malaysia, is constantly facing numerous threats, such as poaching and trafficking, which leave devastating effects on biodiversity and cause climate change. In Malaysia, the Wildlife Conservation Act 2010 (WCA 2010) was enacted to regulate, protect, conserve, and manage wildlife in Malaysia. This article scrutinises the application of the WCA 2010 to determine the extent of its application in Malaysia. Aside from that, the article also examines decided cases that deal with various types of offences mentioned in the WCA 2010. Such analysis has allowed the detection of certain weaknesses in the legislation, wherein suggestions for reform are thereby made. This study primarily utilises a doctrinal legal research method through a critical analysis of the WCA 2010 and related cases. The article finds that a comprehensive understanding of the existing policies and laws relating to wildlife conservation in Malaysia is needed. This understanding will enable policymakers, stakeholders and the public to appreciate the overall legal and policy framework of wildlife conservation in Malaysia and promote effective as well as efficient enforcement of the law.

**Keywords:** Protection of Wildlife, Wildlife Conservation Act 2010, Challenges to Wildlife, Conservation in Malaysia, Human-Wildlife Conflict.

## **DARIPADA UNDANG-UNDANG KE KELANGSUNGAN: MENGAWAL SELIA PEMULIHARAAN HIDUPAN LIAR TERANCAM DI MALAYSIA**

### **ABSTRACT**

Menurut Laporan Living Planet, Dana Hidupan Liar Sedunia (WWF) 2024, terdapat penurunan purata sebanyak 73% dalam populasi spesies hidupan liar antara 1970 dan 2020. Walaupun usaha pemuliharaan membantu dalam menyelamatkan beberapa spesies hidupan liar, tindakan segera diperlukan jika ingin melihat kepupusan diterbalikkan. Kesan kemerosotan hidupan liar melampaui potensi kehilangan budaya. Malah, negara yang kehilangan spesies hidupan liar dijangka mengalami masalah ekologi yang mengakibatkan kehilangan biodiversiti yang boleh membawa kepada krisis ekonomi. Hidupan liar di seluruh dunia, termasuk Malaysia, sentiasa menghadapi pelbagai ancaman, seperti pemburuan haram dan pemerdagangan yang meninggalkan kesan buruk terhadap biodiversiti dan menyebabkan perubahan iklim. Di Malaysia, Akta Pemuliharaan Hidupan Liar 2010 (WCA 2010) telah digubal untuk mengawal selia, melindungi, memulihara dan mengurus hidupan liar di Malaysia. Artikel ini meneliti penggunaan WCA 2010 untuk menentukan

sejauh mana penggunaannya di Malaysia. Selain itu, artikel itu juga mengkaji kes-kes yang diputuskan yang berkaitan dengan pelbagai jenis kesalahan yang disebut dalam WCA 2010. Analisis sedemikian telah membolehkan pengesanan kelemahan tertentu dalam perundangan di mana cadangan pembaharuan dibuat. Kajian ini terutamanya menggunakan kaedah penyelidikan undang-undang doktrin melalui analisis kritikal WCA 2010 dan kes yang berkaitan. Makalah ini merumuskan bahawa penemuan dijangka dapat memberikan pemahaman yang menyeluruh tentang dasar dan undang-undang sedia ada yang berkaitan dengan pemuliharaan hidupan liar di Malaysia diperlukan. Pemahaman ini akan membolehkan penggubal dasar, pihak berkepentingan dan orang ramai menghargai keseluruhan rangka kerja undang-undang dan dasar pemuliharaan hidupan liar di Malaysia dan menggalakkan penguatkuasaan undang-undang yang berkesan serta cekap.

**Kata Kunci:** Perlindungan Hidupan Liar, Akta Pemuliharaan Hidupan Liar 2010, Cabaran Terhadap Hidupan Liar, Pemuliharaan di Malaysia, Konflik Manusia-Hidupan Liar.

## INTRODUCTION

The National Biodiversity Index,<sup>1</sup> stated that there are over 15,000 species of vascular plants and Malaysia has an estimated 15,000 species of vascular plants, 306 species of mammals, 742 species of birds, 242 species of amphibians, 567 species of reptiles, over 449 species of freshwater fish, over 500 species of marine fish and more than 150,000 species of invertebrates, making it 12<sup>th</sup> in rank as the world's megadiverse region.<sup>2</sup> Despite this fact, Malaysia is plagued by constant risks and threats towards many of the domestic wildlife species. An example can be seen in the Belaga district in central Sarawak, where it was reported that the rare Bornean sun bear, as well as wild birds, including hornbills, were disappearing from areas where

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<sup>1</sup>Secretariat of the Convention on Biological Diversity, "Malaysia – Country Profile," accessed November 26, 2025, <https://www.cbd.int/countries/profile?country=my>; Malaysian Biodiversity Information System, "Convention on the Conservation of Migratory Species of Wild Animals (CMS)," accessed November 26, 2025, <https://www.mybis.gov.my/art/33>

<sup>2</sup>Elena Koshy, "Malaysia and Southeast Asia at the Heart of Massive Wildlife Trade." *New Straits Times*, March 1, 2020. <https://www.nst.com.my/lifestyle/sundayvibes/2020/03/570621/malaysia-and-southeast-asia-heart-massive-wildlife-trade>

they were previously commonly found.<sup>3</sup> One of the main reasons for these disappearances includes the existence of transboundary animal smuggling to and from Malaysia. This is also evident in a 2025 announcement by Royal Malaysian Customs Director-General, Datuk Anis Rizana Mohd Zainudin that the Customs Department had managed to arrest an Indian National who was caught trying to smuggle pangolin scales out of Malaysia.<sup>4</sup> It was also reported that Indian authorities had recorded 56 wildlife seizure cases in 2022, where nearly half of the cases came from Kuala Lumpur.<sup>5</sup> What is of equal concern are also reports from the Wildlife and National Parks Department (PERHILITAN) that seized a total of 52 wild animals, including 48 Common Marmosets and 4 suspected Golden-Handed Tamarins, at the Kuala Lumpur International Airport (KLIA). It was suspected that the animals were being smuggled from an African country to be sold in Malaysia.<sup>6</sup> Therefore, Malaysia is a focal point for the illegal import and export of various types of wildlife species.

These incidents call for a pressing need to focus on wildlife protection and conservation in Malaysia. Although the authorities have implemented wildlife laws and regulations with PERHILITAN actively monitoring and curbing poaching as well as other illegal wildlife activities, endangered animals continue to be killed, trafficked, and traded in various forms. The pressing concern relating to the rampantness of wildlife offences is even judicially recognised by the Malaysian courts. In *Public Prosecutor v Nguyen Thi Huong* [2014] MLJU 1917, the High Court took judicial notice of the rampant nature of the offences against wildlife, to justify the imposition of a deterrent sentence to put a stop to the commission of offences against wildlife.

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<sup>3</sup>Stephen Then, "Bears, Other Wildlife Disappear from Sarawak," *The Vibes*, July 22, 2024, <https://www.thevibes.com/articles/news/102846/lead-bears-wild-birds-other-wildlife-disappearing-in-sarawak>

<sup>4</sup>"Who's Leading the Perhilitan Bust against Animal Smugglers in KLIA? Meet MAHB's Canine Heroes Van and Perry," *Malay Mail*, May 14, 2025, <https://www.malaymail.com/news/malaysia/2025/05/14/whos-leading-the-perhilitan-bust-against-animal-smugglers-in-klia-meet-mahbs-canine-heroes-van-and-perry/176762>

<sup>5</sup>Malay Mail, "Who's Leading the Perhilitan Bust against Animal Smugglers in KLIA?"

<sup>6</sup>"52 Primates Seized at KLIA, Destined for Local Pet Shops," *New Straits Times*, December 26, 2024, <https://www.nst.com.my/news/nation/2024/12/1153139/52-primates-seized-klia-destined-local-pet-shops>

In the case of *Tijelo Jacquinn a/k Kuin v Public Prosecutor* [2020] 9 MLJ 755, the High Court held that a) the law recognises the importance of wildlife conservation; and it is fundamental to understand the importance of wildlife protection and conservation. The judgement also emphasises a collective responsibility to protect and conserve the wildlife. Hence, the objective of this paper is to examine the existing legal framework concerning wildlife conservation and protection in Malaysia. An analysis is also made on the extent of the efficacy of existing laws, which give rise to emerging issues, as well as challenges faced by enforcement agencies in Malaysia. From here, some solutions are proposed to enhance the existing legal framework and improve the protection and conservation of endangered wildlife species in Malaysia.

## LITERATURE REVIEW

Available literature on the issue of wildlife protection and conservation is abundant. Various literature in Malaysia, has highlighted that intensified development efforts in the country, particularly developments impacting wildlife habitats, have posed potential threats and challenges towards wildlife species in the country. Apart from developments in agriculture, wildlife species are also threatened due to hunting and poaching activities. This was substantiated in the findings of Saikim, Yunus, Mahyudin, Nathan, which revealed that hunting was carried out for several reasons, including securing food, which could inadvertently result in the depletion of the wildlife population.<sup>7</sup>

Other than that, according to Lightson, Mat-Ghani, Haslindawaty, habitat degradation and over-exploitation for human-use, have also led to the depletion of the wildlife population. For Example, the Sambar deer (*Rusa unicolour*) has been exploited for traditional medicine that has led it to be considered an endangered species. This has necessitated the enhancement of the current

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<sup>7</sup>Fiffy Hanisdah Saikim, Nurin Shahira Mohd Yunus, Azniza Mahyudin, Senthilvel K. S. S. Nathan, Hussien Muin, Arnie Hamid, Nor Akmar Abdul Aziz, et al., "Empty Forest Syndrome: Are We There Yet? A Preliminary Analysis of the Hunting and Poaching Activities in Selected Areas in Sabah, Malaysia," *Journal of Tropical Biology and Conservation* 20 (2023): 219–44., page 239.

framework on protecting the Sambar deer, including improving legal enforcement for unlawful trade and poaching.<sup>8</sup> There are also efforts made for captive breeding and release as well as better management of its habitat and enrichment.<sup>9</sup>

Literature has also pointed out incidents of human-wildlife conflict (HWC) which have endangered co-existence between mankind and wildlife species. This was highlighted by Xin L. who showcased an increasing trend of HWC cases in Peninsular Malaysia. The findings advocated on the formulation of a clear policy to balance the need for development and the mitigation of HWC cases, as well as proposing proactive collaborative measures by all key stakeholders.<sup>10</sup> Other literature has also discussed HWC incidents that threaten the safety and security of the local community and disturb their economic activities. As analysed in Abdullah-Fauzi, Sariyati, Narrshen, et. al. and Sainuddin and Csányi, HWC caused cultivated fruit consumption, poultry predation, and agricultural and property damage.<sup>11</sup>

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<sup>8</sup>Amanda Lauriel Lightson, Siti Nor Assyuhada Mat-Ghani, Nur Haslindawaty Abd Rashid, Salman Saaban, Mohd Tajuddin Abdullah, Jeffrine Japning Rovie-Ryan, Frankie Thomas Sitam, and Hisham Atan Edinur, "Sambar Deer: A Review on Status, Distribution, Conservation, and Commercial Potential in Peninsular Malaysia," *Pertanika Journal of Tropical Agricultural Science* 48, no. 2 (2025): 639–651, page 647-648.

<sup>9</sup>Lightson et al., "Sambar Deer: A Review on Status, Distribution, Conservation, and Commercial Potential in Peninsular Malaysia," 647-48.

<sup>10</sup>Lim Qiu Xin, Siti Nor Assyuhada Mat Ghani, Nur Syahmina Rasudin, Noraini Abdul Ghafar, Nur Haslindawaty Abd Rashid, Dennis Choon Yung Ten, Salman Saaban, Hisham Atan Edinur, and Mohd Tajuddin Abdullah, "Characterisation of Human–Wildlife Conflict and Casualties Caused by Wildlife Attacks in Peninsular Malaysia," *IIUM Medical Journal Malaysia* 23, no. 1 (2024):84 -88.

<sup>11</sup>Nurfatiha Akmal Fawwazah Abdullah-Fauzi, Nur Hartini Sariyati, Thevarajan Narrshen, Hidayah Haris, Nursyuhada Othman, Farah Farhana Ramli, Mohd Lokman Ilham-Norhakim, et al., "Coexistence and Potential of Smooth-Coated Otter (*Lutrogale perspicillata*) as Biological Control for Invasive Nile Tilapia (*Oreochromis* spp.) in Southern Peninsular, Malaysia," *Journal of Wildlife and Biodiversity* 9, no. 1 (2025): 1–16.; Siti Mastura Hasan and Sándor Csányi, "Human–Asian Palm Civet Conflict in Malaysia," *Sustainability* 15, no. 15 (2023b): 11570, page 1.

Meanwhile, Schmitz Oswald,<sup>12</sup> and Zeng Y.,<sup>13</sup> identified other causes for HWC as well such as starvation, climate change, illegal poaching and economic development that have threatened the wildlife.

To mitigate and minimise the impact of HWC, the adoption of technologies would be meaningful. As highlighted in Hasan, Sainuddin and Csányi, Geo Wild System (GWS) could be deployed to effectively manage HWC in Malaysia, by which such system allows the local community to actively report HWC incidences. It also strategises wildlife traps by identifying key hotspots and provides efficient recording of data of the identified wildlife species.<sup>14</sup> Technological interventions were also proposed in Salleh, by which the use of disruptive technologies such as DNA barcoding, automated detection systems, and AI-based cyber surveillance was analysed based on case studies, with proper identification of its challenges.<sup>15</sup> It also highlighted the prime importance of collaborative initiatives, considering that wildlife conservation necessitated a transdisciplinary approach ranging from ensuring criminal justice, promoting eco-tourism and enhancing environmental standards.<sup>16</sup> The use of camera-trapping to detect elusive birds, as suggested in Mohd, Baharudin, Azizan et. al., is also a useful complementary measure in addition to other survey methods like direct observation and mist-netting, which could provide additional

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<sup>12</sup>Oswald J. Schmitz and Magnus Sylvén, “Animating the Carbon Cycle: How Wildlife Conservation Can Be a Key to Mitigate Climate Change,” *Environment: Science and Policy for Sustainable Development* 65, no. 3 (2023): 5–17

<sup>13</sup>Yuhaan Zeng, “The Impact of Climate Change on Wildlife and Ecosystems,” *Journal of Biodiversity & Endangered Species* 11 (2023): 478.

<sup>14</sup>Siti Mastura Hasan, Muhammad Sainuddin, and Sándor Csányi, “The Introduction of Geo Wild System (GWS) as a Novel Wildlife Reporting, Monitoring, and Analyzing System in Malaysia,” *Global Ecology and Conservation* 54 (2024): e03183.

<sup>15</sup>Mohd Hairul Haji Mohd Salleh, “Enhancing Wildlife Trade Enforcement in Malaysia: A Review of the Role of Disruptive Technologies and Multi-Stakeholder Collaboration,” *Jurnal BPPK: Badan Pendidikan dan Pelatihan Keuangan* 17, no. 3 (2024): 183–191.

<sup>16</sup>Salleh, “Enhancing Wildlife Trade Enforcement in Malaysia,” 188.

insights, especially in evaluating understory bird species in montane habitats.<sup>17</sup>

Other benefits of using technology are the ability to efficiently estimate the population of existing wildlife. This was emphasised by Najmuddin, Haris, Sufahani, et. al, via public data mining from social media based on statistical and ecological modelling.<sup>18</sup> Meanwhile, Razaai, Husain, Nor, et. al. had proposed a new integrated modelling approach to anticipate potential corridor development for Asian elephant conservation planning, which integrated habitat suitability, circuit theory and least-cost path analysis.<sup>19</sup> Other conservation efforts using technology were also suggested by Bernard, Mohammad-Shom, Kulanthavelu, et. al., where they observed the distribution and population of proboscis monkey (*Nasalis larvatus*) by examining previous research, land-use and land-cover change, and vegetation analysis to shape a long-term sustainable protection.<sup>20</sup>

Indeed, the management and conservation of wildlife requires multifaceted strategies and approaches. In Hasan & Csányi, it was demonstrated that locals' attitudes towards wildlife and their management methods will likely affect local people's tolerance to the

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<sup>17</sup>Marina Mohd, Nur Syakirah Baharudin, Aqilah Amni Azizan, and Chong Leong Puan, "First Attempt to Survey Montane Bird Species Using Camera Traps in Cameron Highlands, Peninsular Malaysia," *Pertanika Journal of Tropical Agricultural Science* 48, no. 2 (2025): 593–602.

<sup>18</sup>Mohd Faudzir Najmuddin, Hidayah Haris, Suliadi Firdaus Sufahani, Nazirah Mohamad Abdullah, Badrul Munir Md-Zain, Mohd Ilham Norhakim Lokman, Hani Nabilia Muhd Sahimi, Siti Nor Huda Abd Ghani, and Muhammad Abu Bakar Abdul-Latiff, "Evaluation of Wildlife Distribution Data in Southeast Asia: Public Data Mining and Ecological Modelling of Malaysia's Primate," *Malayan Nature Journal* 75, no. 2 (2023).

<sup>19</sup>Nur Hairunnisa Razaai, Hazizi Husain, Shukor Md Nor, Amal Najihah Muhamad Nor, Aainaa Amir, Muhamad Azahar Abas, Nor Hizami Hassin, et al., "Utilizing Spatial Modeling to Evaluate Habitat Suitability and Develop Conservation Corridors for Effective Conservation Planning of Asian Elephants (*Elephas maximus*) in Jeli, Kelantan, Malaysia," *Ecological Modelling* 502 (2025): 111043.

<sup>20</sup>Henry Bernard, Sharifah NHB Mohammad-Shom, Menaga Kulanthavelu, John CM Sha, Titol P. Malim, Nicola K. Abram, and Ikki Matsuda, "Monitoring the Population and Distribution of the Proboscis Monkey (*Nasalis larvatus*) in the Klias Peninsula, Sabah, Borneo, Malaysia: Insights from an 18-Year Study," *Primates* (2025): 1–18.

protection or conservation of wildlife.<sup>21</sup> For instance, those who had direct experience and were familiar with wildlife engagements will tend to positively support management and conservation practices. Hence, the practicality and effectiveness of conservation efforts should also be examined in the light of social data on local attitudes, as quantitatively analysed. While inadequacy of policies and strategies towards coexistence of human-wildlife was identified as a significant gap in the line of literature, consideration and importance of social dimensions on HWC was also emphasised in Abas, Rahman, Md Fauzi, et. al.<sup>22</sup>

Personal precautionary measures would equally play a significant role in minimising wildlife conflicts. For example, Norshaqinah, Muzneena, Juliana et. al exemplified that ensuring speed control and courteous behaviour while driving at critical wildlife crossings could reduce wildlife-vehicle collisions (WVC).<sup>23</sup> In addition, Fauzi, Munian, Mahyudin, et. al. and Ismail, Daud, Arazmi, et. al. pointed out that mitigation initiatives concerning population depletion of wildlife species should also consider understanding and analysis of the wildlife dietary habits and other ecological factors influencing the dynamics of the overall population.<sup>24</sup>

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<sup>21</sup>Siti Mastura Hasan and Sándor Csányi, “Attitude Index of Local Communities toward Wildlife and Their Management Methods in Malaysia,” *Diversity* 15, no. 2 (2023a): 202.

<sup>22</sup>Azlan Abas, Abdul Hafiz A. Rahman, Tengku Abdul Hadi T. Md Fauzi, and Ahmad Hafizuddin M. Yusof, “A Bibliometric Review of Global Research on Human–Wildlife Conflicts,” *Frontiers in Environmental Science* 12 (2025): 1517218.

<sup>23</sup>Norshaqinah Ayob, Muzneena Ahmad Mustapha, Juliana Senawi, and Norhayati Ahmad, “Drivers’ Perception and Attitude towards Wildlife-Vehicle Collisions in Langkawi Island, Kedah, Malaysia,” *Malayan Nature Journal* 75, no. 2 (2023): 341–351.

<sup>24</sup>Nur Athirah Fauzi, Kaviarasu Munian, Nur Aina Amira Mahyudin, and Nor Atiqah Norazlimi, “Ecological Insights on the Feeding Behaviour of Waterbirds in an Important Bird and Biodiversity Area of South West Johor Coast, Malaysia,” *Biodiversity Data Journal* 13 (2025): e141250.; Nor Adibah Ismail, Ummi Nur Syafiqah Daud, Noor Fatimah Najihah Arazmi, Shukor Md Nor, and Mohammad Saiful Mansor, “Dietary Shifts in Barn Swallow *Hirundo rustica* Passage and Wintering in Peninsular Malaysia: From the Early to Late Migratory Season,” *European Journal of Wildlife Research* 71, no. 2 (2025): 1–12.

Based on the review of recent literature, most studies are keen to practically shape the effective strategies and initiatives towards successful conservation of wildlife species. However, there is an apparent wanting in literature which discusses the current state of the law and its development in the context of wildlife protection and conservation. Admittedly, the study by Sirat, Roslim, Abdullah et. al, did highlight the differences in relevant legislations relating to the protection of wildlife, nevertheless, this work only concentrated on the legal protection aspects found in the law.<sup>25</sup> It is submitted that examining the legal framework for the conservation of wildlife is also equally significant in ensuring that conservation efforts are administered and meaningfully premised upon a comprehensive legal framework that could negate any possible legal issues and challenges.

## METHODOLOGY

This research utilises the doctrinal legal research where the primary sources, such as legislation, both the principal and delegated were analysed. The research analysed both principal and amendment legislations, relating to wildlife conservation and protection, primarily, under the Federal Constitution 1957, the Forestry Act, 1984, International Trade in Endangered Species Act 2008 and the WCA 2010. The first part of the legal analysis involves the descriptive analysis of the relevant sections of this legislation. This is necessary to provide a comprehensive understanding of existing laws related to the issue. From there, the relevant rules are extracted and applied to see how the issues could be settled. The research applied the deductive method of analysing statutes and applying it to solve the highlighted issues.

Aside from that, Malaysian Court decisions were extensively evaluated to gain insights into judicial interpretation and important judicial highlights of the legal issues raised on the interpretation of the related legal provisions. The cases were selected based on their relevance to the topic discussed. Such case laws were retrieved from

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<sup>25</sup>Nur Irinah Mohamad Sirat, Salmah Roslim, Mohd Zulharmey Abdullah, and Syatirah Abu Bakar, "Laws of the Wild: The Malaysian Legal Framework on Wildlife Conservation," *Environment-Behaviour Proceedings Journal* 8, no. SI13 (2023): 45–50.

two (2) online legal research databases, LexisAdvance Malaysia, and the Current Law Journal (CLJ). Governmental policies supplementing the legislative framework were also examined. Primary sources of law will be substantiated further with secondary sources of law, including the data gathered from a review of academic writings, newspaper articles, and publicly available policy reports. The research scope is limited to the examination of the legal framework in Malaysia. The doctrinal content analysis method facilitated the understanding of the country's current state of wildlife conservation policies and laws.

## AN OVERVIEW OF WILDLIFE PROTECTION LEGAL FRAMEWORK

### What Constitutes “Wildlife” and “Conservation Activity”?

Some wildlife ecologists and conservationists, define “wildlife” to include both animals and plants or both flora and fauna.<sup>26</sup> The definition of wildlife may differ from one country to another. In the UK, wildlife includes animals and birds of any species and plants that ordinarily grow in England or Wales.<sup>27</sup> In Singapore, wildlife means any animals belonging to wildlife species including the young and eggs.<sup>28</sup> In the United States of America and in China, the legal framework of wildlife excludes flora/plants from the definition of “wildlife”, and is purely focused on wild fauna *per se*.<sup>29</sup>

Section 3 of the Wildlife Conservation Act 2010 (Act 716) (“WCA 2010”) defines wildlife as, “*any species of wild animal or wild*

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<sup>26</sup>“Wildlife,” *Oxford Advanced Learner’s Dictionary*, Oxford Learner’s Dictionaries, accessed November 26, 2025, <https://www.oxfordlearnersdictionaries.com/definition/english/wildlife>; Greg Yarrow, *Wildlife and Wildlife Management*, Fact Sheet 36 (Forestry and Natural Resources, Clemson Extension, revised May 2009), <https://dc.statelibrary.sc.gov/bitstreams/7070ca48-d63f-496e-aae4-58c35a537f20/download>; and Miaomiao Tian, Gary R. Potter, and Jacob Phelps, “What Is ‘Wildlife’? Legal Definitions That Matter to Conservation,” *Biological Conservation* 287 (2023): 110339.

<sup>27</sup>Section 2 of Wildlife and Countryside Act 1981.

<sup>28</sup>Section 2 of Wildlife Act 1965.

<sup>29</sup>Miaomiao Tian, Gary R. Potter, and Jacob Phelps, “What Is ‘Wildlife’? Legal Definitions That Matter to Conservation,” *Biological Conservation* 287 (2023): 110339.

*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 amendment to WCA 2010 in 2022 has extended the definition of wildlife to encompass "totally protected, protected, or controlled" species.<sup>30</sup>

According to the National Wildlife Federation (NWF), wildlife conservation refers to "*the preservation and protection of animals, plants, and their habitats*".<sup>31</sup> Relatively, WCA 2010 defines 'conservation activity' as an activity related to wildlife protection, management, and sustainable use.<sup>32</sup> It is worth mentioning that, with regard to the administration of conservation activity and for the purpose of WCA 2010, there is a discretionary powers of the Director General in respect of conservation activity under section 50 of WCA 2010, and such discretionary power is purely administrative or an executive function which involves purely technical and policy considerations of the Department.<sup>33</sup> This means that the Director General has a significant amount of powers to determine matters relating to the award of licenses, which could be open to abuse.

### **Wildlife Conservation under the Federal Constitution**

The Federal Constitution of Malaysia is the supreme law in Malaysia.<sup>34</sup> Since the Constitution is more concerned with the rights and administration of the country, there are no independent constitutional provisions regarding the conservation of wildlife under the Federal Constitution. Nevertheless, it is covered in List III (Concurrent List), by which item 3 of such List III expressly states on "*protection of wild animals and wild birds; National parks*". By being listed out in List III (Concurrent List), Article 74 of the Federal Constitution allows both

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<sup>30</sup>Refer also to section 3 of Wildlife Conservation Act 2010.

<sup>31</sup>National Wildlife Federation, "Understanding Conservation," accessed March 15, 2025, <https://www.nwf.org/Educational-Resources/Wildlife-Guide/Understanding-Conservation>

<sup>32</sup>Section 50(2) of WCA 2010. The power to implement the Act is under the purview of the Director General of the Department.

<sup>33</sup>See such principle in *Lembaga Tata tertib Kumpulan Sokongan (No. 1) Jabatan Perlindungan Hidupan Liar Dan Taman Negara & Ors v. Mariani Ramli* [2021] 9 CLJ 695; [2021] 5 MLJ 857 (Court of Appeal, Putrajaya).

<sup>34</sup>Article 4(1) of the Federal Constitution of Malaysia.

Federal and State governments, via their legislature, to concurrently legislate on such matters. In Sabah and Sarawak, for instance, they have the Wildlife Conservation Enactment 1997 and the Wildlife Protection Ordinance 1998 respectively.

### **Current Procedural Requirements in Cases Against Wildlife Offenders in Malaysia**

The discussion on the definition of “wildlife” would necessitate an investigation into the burden of proving that the animal involved in the case is in fact a “wildlife”. For offences against wildlife, the prosecution bears the burden of proof and evidential responsibility to establish, beyond a reasonable doubt that the subject matter of dealings involved in an alleged offence involved an actual “wildlife” as defined and statutorily protected under the law. For that purpose, it is necessary for the prosecution to tender expert evidence to prove that a suspected wildlife is, in fact, a wildlife statutorily protected under the legislation.<sup>35</sup> This issue was dealt with in the case of *Moslimin bin Bijato @ Bisato & Ors v Public Prosecutor* [2011] MLJU 1061. In that case, contrary to the prosecution, the appellant (defendant) in this case,<sup>36</sup> contended that there was no proper identification and the prosecution had failed to adduce any evidence from a person that is qualified as an expert to identify the carcass as belonging to that of a *Rusa*. The Court explained that in a case concerning offences against wildlife, it is required that the wildlife has been identified first by way of expert evidence.<sup>37</sup>

Apart from proving that a particular subject matter involved in a dealing or transaction is in fact a “wildlife” animal, an examination of the case laws revealed that there is also a need to evidentially prove that a particular transaction is a type of dealing prohibited under the

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<sup>35</sup>In the case of *Moslimin bin Bijato @ Bisato & Ors v Public Prosecutor* [2011] MLJU 1061 (High Court, Tawau), where the issue involved in this case was whether there was sufficient identification of the carcass that such carcass was, in fact, an animal product which the prosecution alleged to be that of a *rusa*, listed in Appendix II, part 1 of Schedule 2 or 3 of the Wildlife Conservation Enactment 1997, Laws of Sabah.

<sup>36</sup>*Moslimin bin Bijato @ Bisato & Ors v Public Prosecutor* [2011] MLJU 1061

<sup>37</sup>See also principles relating to expert witness in the cases of *Wong Chop Saow v PP* [1965] 1 MLJ 247 and in Moktar Abdullah J's judgement in *PP v Lin Lian Chen* [1991] 1 MLJ 316.

WCA 2010, which was directly and causally linked to the suspected criminal offender. For instance, there is a need to establish that there is an act of “keeping” the said wildlife if a particular offence is related to the allegation of unlawfully keeping the wildlife without prior authorisation, and such act of keeping must actually be done by the suspect. There should be a clear causation established between the offender and the offence committed. A break in the causative link could lead to a *prima facie* case against the accused. This situation could arise in instances where a witness from the prosecution pointed to more than one party instead of directly identifying the accused as the main offender.<sup>38</sup>

For the offence of keeping wildlife, it was established that in proving the element of “keeping” wildlife in the offence of illegally keeping wildlife, there shall be clear evidence pointing that the accused was concerned with the life and survivability of the wildlife, rather than mere knowledge or awareness of the existence of such wildlife. In other words, the act of “keeping” requires the accused to be proved to have provided a specific place for the wildlife, or have taken care of the wildlife or have provided food and water to the wildlife, or otherwise provided basic necessities for the survivability of the wildlife.<sup>39</sup> Relatively, the offence of “keeping” wildlife also includes the act of putting wildlife in a safe place.<sup>40</sup>

Thus, to establish criminal fault or *mens rea* on the part of the accused, there is a need to establish that the accused was in the management of the premises. In such a case, the court cautioned that in the provision of WCA 2010, there is no presumption of law against the owner of the premise to establish the offence of “keeping” wildlife.<sup>41</sup>

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<sup>38</sup>See such trite principle of law in a line of authorities such as *Arulpragasam a/l Sandaraju v. PP* [1996] 4 CLJ 597; [1997] 1 AMR 329; *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734; [2003] 2 AMR 89; *Abdullah Zawawi v. PP* [1985] CLJ 19 (Rep); [1985] 2 CLJ 2; [1985] 2 MLJ 16 and *PP v. Kasmin bin Soeb* [1974] 1 LNS 116; [1974] 1 MLJ 230. Refer also to the case of *Pendakwa Raya lwn. Yusoff Bin Yeop Ahmad* [2018] 1 LNS 1690 (High Court, Taiping)

<sup>39</sup>*Pendakwa Raya lwn. Yusoff Bin Yeop Ahmad* [2018] 1 LNS 1690 (High Court, Taiping)

<sup>40</sup>*Azmi bin Ismail dan satu lagi lwn Pendakwa Raya* [2019] 7 MLJ 45 (High Court, Temerloh)

<sup>41</sup>*Azmi bin Ismail dan satu lagi lwn Pendakwa Raya* [2019] 7 MLJ 45

In the case of *Azmi bin Ismail dan satu lagi lwn Pendakwa Raya* [2019] 7 MLJ 45, the court could not ascertain who was actually in the management of the premise, thus, the accused could not conclusively be guilty for the act of “keeping wildlife”. Even mere silence and failure to take proactive measures does not incriminate an accused for the act of unlawfully “keeping wildlife”.<sup>42</sup> In other words, the burden of proof in cases involving wildlife requires both the elements of *actus reus* and *mens rea* to be proven by the prosecution. The required *actus reus* and *mens rea* depend on the legal provision as prescribed by the relevant legislation. Upon establishing the unlawful act, (for instance, keeping wild animals), then the next step is to show that such conduct was carried out unlawfully and illegally by which it was done without license, permit or special permit.<sup>43</sup>

Section 58 of the Wildlife Conservation Act specifically deals with the presumption arising out of possession of protected wild animals by unauthorised persons. The section lists of persons who may be considered as authorised persons. This includes among others, licensed dealers, licensed taxidermists, licensed hunters and other persons listed under the section. Exceptions to section 58 is found in sections 59 and 60 of the Wildlife Conservation Act.

### **A Glimpse of Wildlife Conservation Legal and Policy Framework in Malaysia**

The wildlife conservation framework in Malaysia is supported by both legal and policy documents. Firstly, in terms of statutory framework, both the state and federal governments have passed various legislations for the protection and conservation of wildlife.<sup>44</sup> There are three main sets of legislation governing wildlife conservation in Malaysia, which are the WCA 2010 (for Peninsular Malaysia), the Wildlife Conservation Enactment 1997 (Sabah No. 6 of 1997) (for the State of Sabah), and the Wildlife Protection Ordinance 1998 (Chapter 26) (for the State of Sarawak). Despite these three governing sets of legislation, a common statutory provision featuring the possession of and other

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<sup>42</sup>Refer also to the case of *Azmi bin Ismail dan satu lagi lwn Pendakwa Raya* [2019] 7 MLJ 45 (High Court, Temerloh)

<sup>43</sup>*Tijelo Jacquinn a/k Kuin v Public Prosecutor* [2020] 9 MLJ 755 (High Court, Kuching)

<sup>44</sup>Sirat et al., “Laws of the Wild,” 45–50.

activities against protected wildlife is strictly prohibited until and unless there is proper authorisation by the relevant authorities.<sup>45</sup> It is interesting to note that, in line with the legal definition of wildlife in the UK as aforementioned, Sabah, through its enactment, defines “wildlife” to encompass both animals and plants.

These legislations are complemented by several governmental policies. The National Policy on Biological Diversity 1998 aims to minimise the impacts of human activities on biological diversity. In fact, Action Plan No.7 is to adopt measures to alleviate the impact of human activities on the displacement of wildlife. This Policy has since been updated in 2016 and is operative until 2025. The 2016-2025 Policy not only focuses on ensuring the conservation and sustainable use of biological resources, which was the focus of the 1998 Policy. The latter version takes a more integrated approach where it also focuses on the restoration of ecosystems, mitigation of climate change, emphasis on sustainable development and ensuring sustainable management. This version of the Policy also aligns with the United Nations Sustainable Development Goals (SDGs), especially those related to life on land (SDG 15).

Another important addition to the Policy emphasised inter-agency cooperation and encourages coordination between government bodies, NGOs and local communities to enforce wildlife protection laws. Highlights were also made to the importance of implementing international treaties such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as a mechanism to curb illegal wildlife trade.

Another important policy is the National Policy on Environment 2002 which aims to maintain and establish natural resources areas as zones for conservation and protection of indigenous flora, fauna and genetic resources. Meanwhile, the National Policy on Climate Change 2009 has put the conservation of the environment and natural resources as Principal No.1. The latest is the National Policy on Biological Diversity 2016-2025 which provides the direction and framework for

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<sup>45</sup>See Section 9-11 of the Wildlife Conservation Act 2010 (WCA 2010) for Peninsular Malaysia; Part IV (Section 25-39), Part V (Section 40-53), Part VII (Section 64-87) of Wildlife Conservation Enactment 1997 for the State of Sabah; and Part IV (Section 29-44) of Wildlife Protection Ordinance 1998 for the State of Sarawak.

conserving wildlife throughout Malaysia. One of its targets is to conserve wildlife to ensure that wildlife particularly extinct animals are properly conserved and protected. The Policy also targeted to reduce poaching, illegal harvesting and trade of wildlife, fish and plants. Recently in 2024, National Policy on Climate Change 2.0 was issued by the Ministry of Natural Resources and Environmental Sustainability (NRES), by which in its Strategic Thrust 3 to emphasise adaptation and climate resilience measures that benefits socio-economic and development goals, provisions on “wildlife” animals was noted in Strategy 2 under the said Strategic Thrust 3, which demonstrated government’s willingness to, “*increase protection of wildlife against climate change such as establishing wildlife reserves, preserving genetic diversity and enhancing human-wildlife conflict management in disasters*”.<sup>46</sup>

### **Licensing Mechanism under the Wildlife Conservation Act 2010 (WCA 2010) (Amended 2022)**

It must be noted that the WCA 2010 does not totally prohibit activities and dealings relating to wildlife animals, but rather regulates it by virtue of licensing provisions. This has been enshrined in provisions relating to the requirement of license, permit or special permit as envisaged under section 9, 10 and 11 of WCA 2010 respectively.

The legal implication of the abovementioned provisions is that several types of activities involving wildlife IF such activities are permitted under the Act, through the granting of a licence from the relevant authorities. The provisions relating to the application, grant and use of such license are detailed out in Chapter 2 (Application for licence, etc.) under Part III (Licensing Provisions) of WCA 2010. A person may apply for a licence or permit to be granted to them by submitting to the licensing officer<sup>47</sup> an application in such form and

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<sup>46</sup>Government of Malaysia, *National Policy on Climate Change 2.0* (Putrajaya: Ministry of Natural Resources, Environment and Climate Change, 2024), accessed March 15, 2025, <https://www.nres.gov.my/ms-my/pustakamedia/Penerbitan/National%20Policy%20on%20Climate%20Change%202.0.pdf>

<sup>47</sup>The term “licensing officer” is statutorily defined in section 3 of WCA 2010, which provides that, “*“licensing officer”- (a) in relation to a licence, means a Director, a Deputy Director or an Assistant Director; and (b) in relation to a permit or special permit, means the Director General*”.

manner as determined by the Director General.<sup>48</sup> Upon such application, the relevant licensing officer may, after considering the application made under section 12, approve or refuse the application.<sup>49</sup> If it involves an application for a special permit, the approval by the licensing officer may only be granted after the approval of the Minister is given.<sup>50</sup> The authorities may attach conditions to any permit approved. The period of validity of such license, permit or special permit shall be for such period as may be specified in the licence, permit or special permit, unless sooner suspended or revoked.<sup>51</sup>

It should be noted that the imposition of conditions for the issuance of a license under section 14 of the WCA 2010 is subject to the discretion and prerogative of the licensing officer.<sup>52</sup> It must be highlighted that any challenge regarding the licensing under the WCA 2010 and its policies are a matter of public law. Thus, a challenge against such matter should be done by way of judicial review,<sup>53</sup> if it could be shown that the condition imposed on the license is plainly unreasonable and irrational.<sup>54</sup> The fact that discretionary powers are given to the licensing officers may give rise to abuse of power, which should be fairly controlled by judicial review.

### **Responsibility for Wildlife Protection**

The protection and conservation of wildlife is not the sole responsibility of the government and the relevant authorities, but rather

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<sup>48</sup>Section 12(1) of WCA 2010.

<sup>49</sup>Section 14(1) of WCA 2010.

<sup>50</sup>Section 14(2) of WCA 2010.

<sup>51</sup>Section 16 of WCA 2010.

<sup>52</sup>This was affirmed in the case of *Taman Buaya Langkawi Sdn Bhd v. PP* [2022] 3 CLJ 685 (Court of Appeal, Putrajaya), where it was held that the licensing officer has the discretion to impose any conditions deemed fit and reasonable. It is different from the power of the Director General under section 35 of WCA 2010 which conditions are linked to government policy and are more general in nature as they govern the granting of licences.

<sup>53</sup>See *Dalian Dragon Leader Import & Export Co Ltd v. Ketua Pengarah Jabatan Perlindungan Hidupan Liar & Taman Negara & Ors* [2012] 6 CLJ 143 (High Court, Kuala Lumpur).

<sup>54</sup>See *Taman Buaya Langkawi Sdn Bhd v. PP* [2022] 3 CLJ 685 (Court of Appeal, Putrajaya).

it should be the responsibility of all citizens. Hence, a concerted effort would require determination, commitment, and collective effort by all the stakeholders. This proposition was upheld in *Pendakwa Raya Iwn Hem Pan dan lain-lain* [2024] MLJU 181, where it was held that there should be a cognisance of the significance of environmental protection by the public and the authorities. The public should carry out their duty and implement their best efforts to protect and conserve wildlife from the threat of extinction. The court also emphasised the importance of protecting wildlife as they are the silent victims. The court believed that it was only fair that any offenders should be punished severely for the offence committed.

In *Public Prosecutor v Nguyen Thi Huong* [2014] MLJU 1917 and *Tijelo Jacquinn a/k Kuin v Public Prosecutor* [2020] 9 MLJ 755, the courts held that the authorities, together with the courts are bound to fundamentally uphold and protect the rights of wildlife as envisaged by the legislature's intention. It was held that the interest of the public demands protection and conservation of wildlife under the laws to be fully observed and complied with. There is a public interest in respect to wildlife protection and conservation.<sup>55</sup> Therefore, there is a duty upon the court to safeguard the public interest to protect the wildlife and to uphold a no-tolerance policy for illegal wildlife smuggling. With the proposition that the enforcement mechanism is a public collective duty which shall be done not only by the relevant agencies, but also includes the courts as well, it is equally submitted that the sentencing of wildlife offenders for the commission of offences against wildlife is an inextricable part of the enforcement mechanism in the framework governing wildlife protection and conservation in Malaysia.

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<sup>55</sup>In *Public Prosecutor v Nguyen Thi Huong* [2014] MLJU 1917 (High Court, Shah Alam), the High Court held that “*there can be much argument that it would be in the public interest to ensure the protection of certain species of wildlife. It is also in keeping with the overall concept of public interest that such rights of liabilities as are affected can be gleaned from a particular Act that has been amended in order to reflect the intended public interest. In the instant case that Act is the Wildlife Conservation Act 2010 ('Act 716'). This Act replaced the Wildlife Preservation Act 1972 ('Act 76'). One of the main aims in replacing Act 76 with Act 716 was because the punishment for offences under Act 76 prescribed disproportionately lower sentences for offences committed.*”

The amendment to the WCA in 2022 saw a significant change in the amount of fines and the number of years for imprisonment for certain offences. For example, Section 49 was amended by adding specific prohibitions for hunting any wildlife, animal or bird in any wildlife reserve or wildlife sanctuary.<sup>56</sup> The section further prohibited the taking, disturbing or destroying of any nest or egg of any wildlife, animal or bird.<sup>57</sup> The section also prohibited any type of disturbance, cutting, removing or taking of any soil, timber or vegetation from areas which have been declared as a wildlife reserve or sanctuary.<sup>58</sup> Subsection 3 declares that anyone committing the acts under Section 49(1) (a), (b) or (c) upon conviction, shall be liable for a fine not exceeding one million ringgit or imprisonment for a term not exceeding 10 years or both. Aside from that, the 2022 amendment of the WCA also showed a significant increase in the amount of fines and imprisonment in other sections as well. An example of this can be seen in the increase in fines from RM10,000 to 50,000, while the punishment of imprisonment of 6 months was increased to 3 years in Section 51(3), 53(5), 54(4) and 55(4) of the WCA. This increase in punishments can be seen throughout the Amended Act where the amount of fines and number of years were also increased to the punishment of imprisonment. These efforts were made to empower those in authority and to show the Government's efforts in overcoming the rampant practices that have robbed the country of precious wildlife and the delicate ecosystem.

The above analysis proves that in Malaysia, the offences against wildlife are considered as offences which are serious in nature, which consequently render heavy punishments to be imposed.<sup>59</sup> The courts also emphasised that there must be efforts made to prevent endangerment of wildlife. Hence, there should be zero tolerance when a case involves protected wildlife as it will place the future of the wildlife in great peril, and it will severely affect the population

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<sup>56</sup>Section 49(1)(a)

<sup>57</sup>Section 49(1)(b)

<sup>58</sup>Section 49(1)(b)

<sup>59</sup>In *R v. Radish* [1954] N.Z.L.R 86, it was held that “*One of the main purposes of punishment is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment.*”

dynamics of the species.<sup>60</sup>

It is also relevant to highlight that in the case of *Public Prosecutor v Tran Van San* [2020] 7 MLJ 762, where the court held that the seriousness of the wildlife offence by virtue of section 68 of the WCA 2010, is also corroborated with the fact that such offence is similarly recognised as a serious offence pursuant to the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613). The court held that it had to send a strong message to the public on the seriousness of the offences committed by the accused, as that was the aims and objectives of Parliament in introducing the WCA 2010.

The WCA also provides measures that may be taken by the enforcement agency such as the Department of Wildlife to enforce the Act which includes, among others, forfeiture of wildlife or any property of the criminal offenders.<sup>61</sup> In *Pendakwa Raya Iwn Kamarul Bahari bin Sharif dan lain-lain* [2019] 9 MLJ 487, the court held that subsection (1) and (2) section 110 of the said Act must be read conjunctively and cannot be read disjunctively. In deciding that the order of forfeiture is a mandatory duty of the court to be ordered against the property seized upon commission of the offence under the Act. The High Court relied on the authorities of case laws affirming that the court must honour the clear and unambiguous provisions of any statute.<sup>62</sup>

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<sup>60</sup>See paragraph [13] in the case of *Public Prosecutor v Nguyen Thi Huong* [2014] MLJU 1917 (High Court, Shah Alam)

<sup>61</sup>In the case of *Pendakwa Raya Iwn Kamarul Bahari bin Sharif dan lain-lain* [2019] 9 MLJ 487 (High Court, Taiping), it was held that WCA 2010 provides on mandatory obligation of the court to order for forfeiture for offences committed against wildlife under WCA 2010.

<sup>62</sup>See this principle in the line of authorities as follows: *Malayan Banking Bhd v Public Prosecutor* [2017] MLJU 1955; [2017] 1 LNS 1844; *United Overseas Bank (Malaysia) Sdn Bhd v UJA Sdn Bhd & Another Appeal* [2010] 6 CLJ 204; *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1986] 1 LNS 79; *R v Hughes* [1866] LR 1 PC 81, 91; and *Vacher & Sons v London Society of Compositors* [1913] AC 7

## Key Factors Taken into Consideration in Dealing with Wildlife Offences

In dealing with cases concerning offences against wildlife protection and conservation, the courts in Malaysia have exhibited a consistent trend. In construing the severity and seriousness of cases relating to wildlife, the courts have outlined several key factors that should be taken into consideration when dealing with wildlife cases. In *Pendakwa Raya v Abdul Haq bin Abdul Razak* [2018] MLJU 1640, the Sessions Court outlined all important considerations that should be taken in cases against wildlife offenders. The considerations include the public interest factor and the tendency of the primate to carry diseases. Summarily the considerations are as follows:

- a) **Public interest:** An observation of existing literature shows that in Malaysia, there exist laws and policies to protect wildlife. Nevertheless, these laws and policies must be clearly advocated to the public, to ensure interest and the need for protecting wildlife animals, for the benefit of both the current and future generations. Wildlife contributes to ecosystem balance, and their extinction can have adverse effects on the environment. For the survival of mankind, wildlife needs to be protected. Arrests and fines imposed on offenders would be more effective when the public plays its role in reporting any potential wildlife offences. This could ensure a more effective regime in coping with offences relating to wildlife.
- b) **Wildlife animal as a “Silent Victim” & the Attempt to Put Ourselves in the shoes of those wildlife:** Wildlife are silent victims and unlike human victims, they are unable to take legal action against wildlife offenders. To a certain extent they are defenceless when captured, shot, injured, or killed by inhumane wildlife hunters. Therefore, it is up to society to ensure justice is served for the wildlife.

In *Pendakwa raya lwn Muhammad Yunus & 2 Ors* [2018] 5 LNS 40 the court held that the seriousness, gravity and the cruelty committed against the wildlife shall be fundamentally considered in weighing a heavier sentence to the criminal offender.<sup>63</sup>

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<sup>63</sup>See also *Pendakwa Raya lwn Hem Pan dan lain-lain* [2024] MLJU 181

## **Legal Challenges in Wildlife Protection and Conservation Activities in Malaysia**

As mentioned above, the 2016-2025 National Policy on Biological Diversity has positioned Malaysia to align with the 15th UN SDGs protection of Life on Land, is These SDGs are aimed at protecting, restoring, and promoting sustainable use of terrestrial ecosystems, sustainable forest management, combating desertification, halting biodiversity loss, as well as halting and reversing land degradation. It is acknowledged that, Malaysia faces common challenges affecting global wildlife conservation. These include human-wildlife conflict, loss of habitat, illegal wildlife trade, the rise of invasive species, and pollution. Malaysia's commitment to protecting biodiversity, particularly wildlife, can be observed through international environmental conventions such as the 1973's CITES, and the Convention on Biological Diversity 1992. Some of these international environmental conventions have been given domestic effect either through legislation such as the International Trade in Endangered Species Act 2008 and the Access to Biological Resources and Benefit Sharing Act 2017; and through policies, namely the National Policy on Biological Diversity 2016-2025 and the Malaysia Policy on Forestry 2021.

This part of the article comprehensively summarises the challenges faced by Malaysia in ensuring that the country is steered to fulfil the international responsibilities mentioned above.

The first challenge is the overlapping jurisdictions, powers, and duties of both the Federal and State Governments when it comes to environmental-related issues.<sup>64</sup> The challenge arises when the subject matter of an international treaty relates to a matter that falls under List II, and therefore, beyond the legislative competence of Parliament. As an example, forests (the habitat of wildlife) come under Item 3(b) of List II (the State List). Therefore, international conventions ratified by the Federal Government cannot be implemented unilaterally in Malaysia without first consulting the respective States.

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<sup>64</sup>Refer to the Federal, State and Concurrent List in the Federal Constitution. See also interesting discussion on this issue in the Court of Appeal case of *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors And Other Appeals* [1997] 3 MLJ 23.

Even when they are adopted by the States, their implementation and enforcement for habitat and wildlife management in forests are far from simple. For example, forest management in Peninsular Malaysia is controlled by different authorities that comprise the Forestry Department Headquarters of Peninsular Malaysia (a federal department), 11 State Forestry Departments, and 33 District Forest Offices located throughout the Peninsular that are largely governed by the National Forestry Act 1984 and the Forestry Policy of Peninsular Malaysia.

Whereas in Sabah, the Sabah Forestry Department is responsible for forest management, control of harvesting operations, and royalty payment requirements in Sabah. It administers the Forest Enactment 1968, the Forest Rules 1969, the Forest (Timber) Enactment 2015, as well as the Sabah Forest Policy. Similarly, the Forest Department Sarawak and the Sarawak Forestry Corporation are responsible for forest management and administration of forest resources in Sarawak under the Forests Ordinance 2015 (Cap 71), the Forests Regulations, the State Land Use Policy, and the Sarawak Forest Policy. Hence, the implementation or enforcement of international treaties in Malaysia truly depends on the cooperation of all levels of government.

The second challenge is that, whilst Malaysia has put in place various policies on biodiversity, the problem with such policies is that they are neither binding nor enforceable.<sup>65</sup> They are merely guidelines to State Governments on their respective plans and policies within their states. To achieve the targets set out in SDG 15, Malaysia needs to address the loopholes in the law and administrative framework.

The third challenge is to tilt the social balance of conserving wildlife animals and their natural habitat, with the safety of the community and their own properties. Several recent incidents occurred in 2024 where several wildlife attacks were reported in several parts of

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<sup>65</sup>In *Abdul Rahman bin Abdullah Munir & Ors v Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704, the Court of Appeal held that policies are not legally binding on anyone as it is also not a piece of legislation which imposes a public duty to perform any specific act. Also, in *YAM Tunku Dato' Seri Nadzaruddin Ibni Tuanku Jaafar v Datuk Bandar Kuala Lumpur & Anor* [2005] 5 MLJ 633, Raus Sharif J had opined that policies are in their nature transient and are, unlike statute not generally regarded as binding or giving rise to any legitimate expectation. See also Indian Supreme Court in *Narendra Kumar v Union of India* AIR 1989 SC 2138.

the country which resulted in physical injuries, property loss and damage suffered.<sup>66</sup> The presence of wildlife in living areas has posed threats to the safety of the community. This has resulted in a dilemma for the government's efforts in conserving wildlife.<sup>67</sup> The balancing dilemma is further exacerbated by the need to also consider the potential development of natural resources to boost the local economy.<sup>68</sup> In view of this concern, the Malaysian government has issued the National Policy on Biological Diversity 2022-2030, to address the human-wildlife crisis by addressing spatial planning, habitat conservation and biodiversity assessment to prevent and mitigate human-wildlife conflict.<sup>69</sup>

To respond to these challenges, several initiatives have been carried out by the government. Examples of developments include the development of the East Coast Rail Link (ECRL) project which cuts

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<sup>66</sup>“Police: Gua Musang Man in ICU after Wild Animal Attack while Trapping Birds,” *Malay Mail*, September 10, 2024, <https://www.malaymail.com/news/malaysia/2024/09/10/police-gua-musang-man-in-icu-after-wild-animal-attack-while-trapping-birds/149888>; “Malaysia Trapping Tigers after Three People Killed,” *The Straits Times*, December 7, 2023, updated November 11, 2024, <https://www.straitstimes.com/asia/se-asia/malaysia-trapping-tigers-after-three-people-killed>; “Villagers Worried over Sun Bear Attack That Killed Man,” *The Star*, September 16, 2024, <https://www.thestar.com.my/news/nation/2024/09/16/villagers-worried-over-sun-bear-attack-that-killed-man>; “Cars Damaged in Attack by Elephants near JRTB Monument,” *Astro Awani*, October 24, 2024, <https://international.astroawani.com/malaysia-news/cars-damaged-attack-elephants-near-jrtb-monument-493221>.

<sup>67</sup> Hadi Azmi, “Malaysia’s Capture of Tiger Blamed for 2 Deaths Highlights Conservation Dilemma,” *South China Morning Post*, October 21, 2024, <https://www.scmp.com/week-asia/health-environment/article/3283187/malysias-capture-tiger-blamed-two-deaths-highlights-conservation-dilemma>.

<sup>68</sup>“Malaysia’s Palm Oil Industry Champions Sustainability through Ecotourism, Conservation,” *The Borneo Post*, December 5, 2024, <https://www.theborneopost.com/2024/12/05/malysias-palm-oil-industry-champions-sustainability-through-ecotourism-conservation/>

<sup>69</sup>Ministry of Natural Resources and Environmental Sustainability, *National Policy on Biological Diversity 2022–2030* (Putrajaya: Ministry of Natural Resources and Environmental Sustainability, 2022), accessed March 15, 2025, <https://www.mybis.gov.my/pb/5710>

through several forest reserves which are wildlife habitats.<sup>70</sup> Mitigation measures in the ECRL project include creating ecological corridors to allow wildlife to move safely and reduce habitat fragmentation.<sup>71</sup> Aside from that, professional training is given to wildlife officers to prepare them with the necessary skills in handling wildlife crises.<sup>72</sup>

The fourth challenge is an apparent friction in striking a balance between preserving native customary rights and wildlife conservation.<sup>73</sup> In very rare and exceptional circumstances, rights acquired by virtue of native customary rights would prevail over the government's interests.<sup>74</sup> Such right may include the right towards wildlife (for example, the right to collect turtle eggs). However, to exert this right, the claimant must prove that such a purported native customary right exists. Notwithstanding this, it is submitted that the laws should be refined and reviewed to harmonise the interaction

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<sup>70</sup>“Over 80,000 Human-Wildlife Incidents Nationwide since 2018, Dewan Rakyat Told,” *The Star*, November 12, 2024, <https://www.thestar.com.my/news/nation/2024/11/12/over-80000-human-wildlife-incidents-along-ecrl-since-2018-dewan-rakyat-told>

<sup>71</sup>“Over 80,000 Human-Wildlife Conflict Cases Reported in the Country since 2018, RM62.5m in Losses, Dewan Rakyat Told,” *Malay Mail*, November 12, 2024, <https://www.malaymail.com/news/malaysia/2024/11/12/over-80000-human-wildlife-conflict-cases-reported-in-the-country-since-2018-rm625m-in-losses-dewan-rakyat-told/156605>

<sup>72</sup>For instance, officers of Peninsular Malaysia's Department of Wildlife and National Parks (PERHILITAN) and from the Wildlife Crime Bureau/Special Investigation Intelligence Unit of the Royal Malaysian Police has training under a U.S. Fish and Wildlife Service (USFWS) funded project designed to provide foundational information, and build competency and confidence in handling all stages of a wildlife crime investigation, reducing gaps between investigation and prosecution of wildlife offences. See TRAFFIC, “Specialised Training for Improved Investigations of Wildlife Crime in Malaysia,” published August 19, 2024, <https://www.traffic.org/news/specialised-training-for-improved-investigations-of-wildlife-crime-in-malaysia/>

<sup>73</sup>See *Superintendent of Land and Surveys, Miri Division & Anor v Madeli Salleh* [2007] 6 CLJ 509 and *Ab Rauf Bin Mahajud v State Government of Sabah Anor Board of Trustees of Sabah Parks* [2009] MLJU 1356 (High Court, Kota Kinabalu).

<sup>74</sup>*Superintendent Of Land and Surveys, Miri Division & Anor v Madeli Salleh* [2007] 6 CLJ 509 & *Ab Rauf Bin Mahajud v State Government of Sabah Anor Board of Trustees of Sabah Parks* [2009] MLJU 1356

between the rights under native customary rights and the conservation of wildlife. The exercise of native customary rights and the enjoyment of such rights shall only be carried out within certain parameters which it would not adversely affect and threaten the existence of wildlife.

The fifth challenge is a lack of resources and the inability of the enforcement agency in maintaining wildlife after being seized by the enforcement authorities, which would lead to the wildlife being traded again in the market. Therefore, the government should not only put its ultimate focus on the enforcement activities *per se*, but it should also investigate the aspects of maintaining wildlife post-enforcement activities. It means that, upon the wildlife being rescued from those wildlife offenders, the government must structure a comprehensive plan for the maintenance of such wildlife. This was exactly what had happened in the case of *Gek Sing Kaliappan v PP* [1999] 4 CLJ 292 where the court was confronted with an unfortunate outcome of having 1893 snakes die while awaiting disposal of the case.

### **The Legal Effects and Developments of the Legal Framework of Wildlife Conservation under the Wildlife Conservation Act 2010 & the Way Forward**

There are several effects of the statutory provisions regarding wildlife, which firstly, they empower the judiciary to impose sentences by way of fines and imprisonment on offenders.<sup>75</sup> In most cases as examined previously, the courts have indeed imposed severe sentences and punishments on the perpetrators against wildlife.<sup>76</sup> Secondly, the provisions ascertained illegal conduct under the WCA 2010. Under the framework of WCA 2010, particularly in Part VII on “Offences and Penalties”, it envisages several illegal conducts including hunting, keeping, collecting, exporting or importing, using a particular wildlife without prior authorisation. Notwithstanding such definitions, it must be noted that not all illegal conduct has been statutorily defined under the WCA 2010. Consequently, this had left some gaps in the legal framework that require judicial intervention to set out the parameters of such acts. An evident example of such proposition is the act of “keeping” wildlife which is extensively prohibited in, *inter alia*,

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<sup>75</sup>Sirat et al., “Laws of the Wild,”48.

<sup>76</sup>See *Tijelo Jacquinn Kuin v PP* [2020] 4 CLJ 139.

Sections 60, 61, 62, 68, 69 and 70 of WCA 2010.<sup>77</sup>

Regarding the development of the law, it is noted that the WCA 2010 has been further enhanced via recent legislative amendments. The Wildlife Conservation Amendment Act 2022 has increased the punishments for certain offences. For example, the maximum fine in section 71 has been increased from RM500,000 to RM1 million and the maximum term for imprisonment is also increased from 10 to 15 years. In addition, organising and promoting wildlife shows are made as offences.<sup>78</sup> It is hoped that the amendment of WCA 2010 will be an inspiration for Sabah Wildlife Conservation Enactment 1997 and Sarawak Wildlife Protection Ordinance 1998 to be amended as well so that the laws implemented in Peninsular Malaysia are consistent and align with the ones implemented in Borneo.<sup>79</sup> In addition, an amendment was also made to the Environmental Quality Act 1974 (Act 127) to increase the maximum fine for environmental crimes from RM100,000.00 to RM10 million, together with the stipulation of a mandatory jail term for environmental criminals for up to five years.<sup>80</sup> Such legislative amendment would also complement the legislative amendment towards the wildlife conservation regime, whereby the mechanism for protecting wildlife, particularly the endangered ones, could be safeguarded with much more layers of legislative protection by way of criminal sanctions under environmental legislation.

Apart from enhancements to the WCA, there is a need to also ramp up enforcement activities. It was in 2024 that the NRES increased wildlife protection enforcement activities, encompassing enforcement activities to protect *Harimau Malaya* by way of increasing the number of community rangers to 1,924 people, which incurred a total cost of about RM60 million.<sup>81</sup> This was in line with the observation that has been made in the recent case of *Pendakwa Raya lwn Hem Pan dan lain-lain* [2024] MLJU 181 (Sessions Court, Temerloh), where the court has

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<sup>77</sup>Refer to the case of *Pendakwa Raya lwn. Yusoff Bin Yeop Ahmad* [2018] 1 LNS 1690, where the court observed *lacunae* in defining the act of “keeping” wildlife.

<sup>78</sup>Sections 88A and 88B of WCA 2010.

<sup>79</sup>Sirat et al., “Laws of the Wild,” 48-49.

<sup>80</sup>“Malaysia’s Commitment to Environmental Conservation Highlighted,” *Bernama*, December 25, 2024, <https://www.bernama.com/tv/news.php?id=2376854>

<sup>81</sup>Sirat et al., “Laws of the Wild,”

cited “*Titah KDYMM Pemangku Raja Pahang*” and pointed out the need to fortify the enforcement by establishing a specific enforcement unit to effectively curb wildlife offences.

Apart from enhancing the capacity of enforcement units, the government may also need to enhance physical facilities to balance between the wildlife ecosystem and human safety. For instance, 11 cage traps and 20 cameras have been installed in the forested area of Gua Musang district in the north-eastern state of Kelantan, where deadly attacks on wildlife have been spotted.<sup>82</sup> This could materially enhance the monitoring and surveillance system to regulate harmonious interaction and balance in wildlife and human interactions.

## CONCLUSION

Admittedly, despite the existence of a legal framework to protect and conserve wildlife for decades, there is still a lot more to be done to ensure the efforts to protect wildlife will be more effective. The existence of statutes and guidelines must ensure survival. The cases discussed have proven that proper implementation of the law would be effective in ensuring that wildlife victims will continue to be protected and conserved.

Aside from that, the research also found that more efforts need to be made by the state and federal governments to ensure all enforcement agencies play their roles more effectively in enforcing existing laws that seek to protect and conserve wildlife in Malaysia. The Government must also initiate more public awareness campaigns in order to galvanise the community to ensure the continued well-being of wildlife species in Malaysia. It must be noted that the law on its own is useless unless it is properly implemented and adhered to. Efforts must also be made to educate and create awareness in the community on the importance of respecting wildlife as they are part of the ecosystem.

Challenges and issues as identified in this study should be considered and examined by the government to avoid unnecessary hindrance to the effort in wildlife conservation and protection. Perhaps it is wise to reflect upon the concept of Khalifah in Islam, where indeed

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<sup>82</sup>“Malaysia Trapping Tigers after Three People Killed.”

when Allah made men as Khalifah on this earth, it is he who is responsible for caring for all the inhabitants therein by doing good and preventing evil.<sup>83</sup>

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<sup>83</sup>Zohora Azmin Shompa, Mohamed Aslam Akbar, and Hazwani Mohd Mohadis, “Harmonizing Maqasid al-Shari’ah with Sustainable Waste Management Practices: A Conceptual Framework for Principles and Implementation,” *International Journal of Islamic and Middle Eastern Finance and Management* 18, no. 1 (2025): 142–165.

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