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Revisiting Legal Framework for Sustainable Tourism in Taman Negara Malaysia

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Abstract: Tourism industry has widened its scope from traditional tourism to a more sustainable one in the recent decades. Sustainable tourism, ecotourism or green tourism has been the latest jargon used by the industry to attract tourists to be more sustainable and enjoy their holiday in nature. If sustainable development refers to meeting the needs of the present without compromising the ability of future generations to meet their own needs, sustainable tourism would denote tourism which respect and conserve as well as not to harm biodiversity and socio-cultural balance. The greatest task to conserve the remaining biodiversity however may come down to some developing countries. They are now confronted with the real challenges to create sustainable community while coping with their rapid economic growth. Malaysia for instance has gazetted several national parks but those areas are exposed to illegal loggings and deforestation which will have great impact on its biodiversity. The remaining forests in Malaysia should be considered as a protected area as it plays a vital role in achieving specific conservation objectives. They are the sources of water supply, forest produce for human and animals as well as for recreational purposes and sustainable tourism activities. For that matter, under the National Physical Plan (NPP) of 2006, the protected areas shall include all gazetted national and state parks, wildlife reserve or sanctuaries, marine parks, protected forests and other areas designated for statutory protection. It is the intention of this paper to highlight the legislations designed for conservation, management and planning of Taman Negara, the premier national park of Malaysia. The study concludes that the management and planning activities in the national park must be integrated through effective legal framework in order to ensure a proper and systematic usage of the biodiversity and for more successful sustainable tourism activities.

Key words: Integrated management, legal framework, sustainable tourism, Taman Negara, Malaysia

INTRODUCTION

Taman Negara Malaysia or national park Malaysia is the largest protected area in Malaysia covering an area of 434,350 ha of pristine tropical rain forest. The park's boundary transverse through the states of Pahang, Kelantan and Terengganu. It is one of the oldest rainforest in the world, estimated about 130 million years old. It was firstly created in 1939 as the King George V national park and named Taman Negara after independence. Being the best-kept oldest rainforest in the world, it welcomes tourists from all over the world to enjoy its serenity and indulge its natural beauty. Most activities in the park involve trekking into the forest, mount climbing, rapid shooting, canopy walk, etc. It is also a research heaven for scientists as it homes thousands species of flora and fauna waiting to be researched upon. Another fascinating feature of Taman Negara is its aborigines Negritos. Also, known as the Batek, they still live a nomadic lifestyle and depend largely on forest produce. Although, they are shy and gentile natives, they have accepted visitors in their settlement and share their customs and forest knowledge. With all attractions to offer, Taman Negara must be protected and its natural and cultural heritage are conserved for the benefit of future generation.

Ecotourism is a part of sustainable tourism. In 1983, Hector Ceballos-Lascurain coined the term ecotourism which refers to nature-based travel to relatively undisturbed areas with an emphasis on education. In 1993, Hector revised his definition of ecotourism as environmentally responsible travel and visitation to relatively undisturbed natural areas in order to enjoy and appreciate nature (and any accompanying cultural features both past and present) that promotes conservation has low negative visitor impact and provides for beneficially active socio-economic involvement of local populations (Ceballos-Lascurain, 1996). This definition makes ecotourism as a component of sustainable tourism and has been adopted by the

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World Conservation Union in 1996. According to the Quebec Declaration on Ecotourism, ecotourism is a part of sustainable tourism and certain principles under sustainable tourism are directly applicable to ecotourism.

The government of Malaysia has established some well-defined elements of a strong policy towards sustainable tourism development. They are found in documents on national development plans such as the National Development Policy, the Malaysia Plans, the National Conservation Strategy, the National Conservation of Biological Diversity and the National Ecotourism Plan. The new National Ecotourism Plan provides sufficiently detailed information and guidelines on ecotourism related matters to be able to implement a sustainable tourism program (Abidin, 1999). The ecotourism plan outlines the framework for ecotourism development in general and it includes the plan for protected areas and action plans. However, it was argued that despite the fact that ecotourism is growing and is becoming the buzz word now a days, it is obvious that lots of things need to be done especially in fostering the understanding of the local market as well as the private sector regarding ecotourism and responsible tourism (Mohamed, 2002).

In order to discuss on the issues and challenges to sustainable tourism in national park it is pertinent to highlight the definition given to the term national park and ecotourism, respectively which give rise to a contradictory point with how the national park is considered now a days. The International Union for the Conservation of Nature (IUCN) has recommended that the term national park be reserved for relatively large areas where ecosystem are not materially altered by human exploitation and occupation (Resolution 1 of the 10th General Assembly of IUCN, 1969). It is further recommended that the term should not be used for inhabited and exploited areas where landscape planning and measures for the development of tourism have led to areas where industrialization and urbanization are controlled and public outdoor recreation takes priority over the conservation of ecosystem. If the recommendation for the term national park made by IUCN is to be adhered strictly, Taman Negara shall not be entitled for the status of national park. Obviously, Taman Negara is visited by visitors and is being exploited and occupied by human beings. Indeed, it is a place where many people continue to live and make living off the land (Reid, 2000). On the other hand, ecotourism is a responsible travel to natural areas which conserves the environment and improves the welfare of the local (Diamantis, 2004). Some if not its entire natural heritage may be affected or destructed to give way to infrastructural development which is needed to accommodate the tourists and their activities (Khalid *et al*., 2008).

With the increasing number of tourists visiting Taman Negara the natural environment of the park is deemed to be tampered. The tracks and trails from the feet of the visitors, the noise, the smells and trash have been identified as the impact of tourism on the park that massive influx of tourists may cause adverse environmental impact due to increase in consumption of natural resources, consumerism and waste generation. The effect of unsustainable tourism was also being highlighted in PATA Conference 2002 where it could lead to an increased in solid waste, degradation of natural and cultural heritage site, reduction in biological diversity, destruction of wildlife and finally pollution of river, lake and sea (Amran *et al*., 2008). With these concerns in mind, this study will highlight the legal framework for management and planning of Taman Negara and analyse their effectiveness in ensuring a proper and systematic usage of biodiversity and successful sustainable tourism activities in the park.

MATERIALS AND METHODS

This is a doctrinal study on the legislations introduced to manage, plan and conserve the natural heritage of Taman Negara. The main method in this study is content analysis of the primary data which are the laws related to the management, planning and conservation of the park. This includes the Taman Negara Enactments, the Town and Country Planning Act 1976, the Environmental Quality Act 1974, the Local Government Act 1976 and the National Heritage Act 2005. Other secondary data includes books and articles on the subject.

RESULTS AND DISCUSSION

The following discussion reveals the findings of the analysis on the laws relevant to the planning, management and conservation of Taman Negara as an important ecotourism zone.

Taman Negara Enactments: Taman Negara was created as a national park in 1939 as a result of recommendations made by the Wildlife Commission of Malaya Report of 1932. The principle legislation governing national park consists of three separate legislations. This is due to a reason that the Park lies through the states of Pahang, Kelantan and Terengganu. These legislations are Taman Negara (Pahang) Enactment (No. 2 of 1939), Taman Negara (Kelantan) Enactment (No. 14 of 1938) and Taman

Negara (Terengganu) Enactment (No. 6 of 1939). Each state park is dedicated to hold the trust for the purposes of the propagation, protection and preservation of the indigenous flora and fauna, objects and places of aesthetic, historical or scientific interest. In this context, trustee means persons referred to in sub-sect (ii) of Section 3 in whom the state park is from time to time jointly vested. Such persons fulfilling the duties and exercising the powers of the Sultan of Kelantan, Sultan of Terengganu and Sultan of Pahang, respectively.

These enactments had listed out several acts that are strictly prohibited within the state park in effort to preserve its biodiversity. It is stated in Section 8 of all three enactments that no person other than a park official acting in the performance of this duty shall possess any weapon, explosive or trap that may cause injury to any animal within the state park. It is also an offence to introduce any animal into the state park or to remove from the state park any live animal or any part of any dead animal other than an animal lawfully introduced into the state park. Any act that intend to cut, destroy or damage any tree or plant as well as acts of clearing, breaking up, digging or cultivating any land within the parks are strictly forbidden.

In order for the park official to carry out their duty under the Enactment, it is further provided in Section 10 that the trustees may make rules in particular and without prejudice to the generality of their power. To that effect, such rules may delegate to any park official any of the powers and duties of the trustees (including the power of further delegation), prescribe the condition under which the state park may be used, prescribe the fees payable for the use of the state park and prescribe penalties in respect of any contravention of any rule. By virtue of Section 11 of the enactments, the penalties as it stand today shall not exceed 6 months imprisonment or fine of 500 dollars. In the case of a continuing offence there shall be a fine of 50 dollars for every day on which the offence has been committed. Be that as it may, there are activities that still can be conducted within the national park. As mentioned in Section 5(i) of the enactments, the trustees may lease or permit the leasing use or occupation of any land within the state park subject to such conditions and restrictions as they think fit to impose and for the specific purposes only.

As a whole, the three enactments have provided stricter rules on protection and conservation of the biodiversity in Taman Negara since its early inception in 1939. The legislators then have foreseen the park's potential as a tourist destination and permit certain development of infrastructures and tourist facilities within the park. What the enactments failed to anticipate is the increase popularity of ecotourism or responsible tourism in the new millennium. This has increased the number of visitors to the park which if uncontrolled and monitored may produce negative impact to the flora and fauna of the parks.

Environmental Quality Act (EQA) 1972: In line with the above-mentioned activities prescribed by the trustees, it shows that development may be conducted within the national park area. Moreover, since national park is promoted as an important ecotourism spot in Malaysia, more tourist and recreational facilities should be developed. However, in order to ensure that this development will not endanger the environment or the ecosystem within the national park, the management should adhere to the guidelines specified under the Environmental Impact Assessment Guidelines for Development of Tourist and Recreational Facilities in national park. In this regard, several activities are subjected to the Environmental Impact Assessment (EIA). This is legally required for activities prescribed under the Environmental Quality (prescribed activities) (environmental impact assessment) Order 1987. By virtue of study 34A of the EQA1974, any person undertaking a prescribed activity is to prepare and submit a report to the Director General of Environmental Quality for his approval. In the context of the discussion, activities that are subject to an EIA report include development of tourist and recreational facilities in national parks designated under the National Parks Act 1980 and various state enactments or ordinances, tourist facilities and recreational facilities.

It should be noted that EIA report is required as it will assess the environmental consequences of each development project conducted in the park area. Only activities which do not have adverse impact to the environmental quality of the area will be given an approval from the director general of environmental quality. Ideally, every national park should have been thoroughly studied and a management plan set out to identify areas within the parks that may be developed for tourism and recreational purposes. In the light of the above, the Taman Negara Master Plan, 1987 will also govern the management of national parks. This is a policy that forms the basis of more detailed studies, plans and development proposals of Taman Negara, its resources and uses. This plan also covers general policy for the development of specific disciplines, e.g., wildlife management. However, this document itself is not to be considered as a final statement but is intended to be updated and modified.

Town and Country Planning Act (TCPA) 1976: In as much as the activities and development within national park that are governed by the enactments and the Taman Negara Master Plan 1987, there are concerns over development outside but adjacent to the park. Development in the periphery shall have a significant impact to the ecosystem of Taman Negara. In fact, there was an urgent call for a controlled development surrounding the park. In order to reach the park, visitors will go by boat along the river and this can be considered as the highlight of the visit. For that matter, steps should be taken to ensure that the banks of the Tembeling River or any other river that is used for access to the park be kept as forest-lined as possible and free from any signs of development such as plantation and illegal logging in order to avoid heavy siltation in the river. This effect is already being experienced at the park due to logging in the upper Tembeling outside the national park. The build up of the sand island immediately opposite Kuala Tahan diverted the river low pattern towards the bank where the park's jetty floats. This caused serious erosion of the river bank at the mouth of Kuala Tahan and will in time endanger some of the buildings above this bank. Park boatmen have also noticed that the raising of the riverbed by sand deposits makes the river difficult to navigate.

In view of the above issues, the impact of development outside Taman Negara should be studied and methods should be adopted to minimize the adverse impact upon the national park. For that matter, conserving the park is also regarded as part of the town and country planning system as the development near the area should be controlled. With the preparation of National Physical Plan (NPP) under Section 6B of TCPA 1976, it serves as the framework to achieve integrated and sustainable land use planning in the country. Thus, it is important for the relevant authority to ensure that development conducted near the national park shall conform to the provisions of the NPP. However, the TCPA 1976 does not govern national park. In such case, the issues of planning system enshrined under the TCPA 1976 will not be applicable where the park is located. It is also important to note that Kuala Tahan has been recently included under the Jerantut Local Authority. Thus, it can be inferred that development in Kuala Tahan may not be properly regulated by a particular authority previously and that may have a great impact on the surroundings of Taman Negara.

National Heritage Act 2005: It is argued that buffer zone is needed for the park to avoid negative impact of development and illegal logging the periphery especially in Kuala Tahan. It is noted that Sungai Tembeling is not as clear as before due to soil erosion due to land clearing by the river bank of Kuala Tahan. To date, there is no provision for buffer zone for national park in Malaysia under the town and country Planning Act 1976 or the National Parks Act 1980. Nevertheless, the new National Heritage Act 2005 provides that when a site is designated as a heritage site that site shall be conserved and may incorporate a buffer zone around the site that has been designated as a heritage site. Under Section 45 of the Act, the minister in consultation with the national heritage council, shall determine the zone. Nevertheless, the new act is just been gazetted and the heritage list is yet made public. Once the national park is listed then it will be easier to nominate Kuala Tahan and adjacent areas as buffer zone and protect them.

The act also provides for the protection of cultural heritage and in the case of Taman Negara, the cultural heritage of its indigenous groups. Some of them have participated actively in ecotourism and invite the tourist to enjoy their culture. This in effect makes their culture recognizable and reinforces their traditions. Many researchers identify that locals' response to tourism vary across time and depends on access to local resources, amount of consensus and cohesion of locals to tourism and the degree of which the authorities are able to work with the locals (Harrison and Price, 1996). The Batek people in the national park for instance have shown some willingness to invite the tourist to stay and participate in their culture.

Other relevant laws and regulations: Several reasons have been identified as the threat to the conservation of biodiversity in the Taman Negara. These threats should be dealt effectively by the responsible authority with jurisdiction over the management of the park. In this regards, the Malaysia's national policy on biological diversity explained that there is no single comprehensive legislation in Malaysia which relates to biological diversity conservation. Much of the legislation is sector-based. For example the Fisheries Act 1985 deals mainly with the conservation and management of fisheries resources, the Protection of Wildlife Act 1972 deals with the protection of wildlife and the National Forestry Act 1984 deals with the management and utilization of forest. With reference to the management of Taman Negara-National park, the department of wildlife and National parks is entrusted to enforce the protection of Wildlife Act 1972 in order to protect the wildlife and to protect and manage the park. The provisions in the three states enactments above have clearly laid down the list of things that visitors cannot do during their visits to Taman Negara-National park. However, it should be stressed that the provisions in the enactments should be implemented diligently in order to ensure that the treasures of this park will not be robbed by some irresponsible person. To give more powers to the enforcement mechanism in

conserving biodiversity in Taman Negara-National park, the protection of Wildlife Act 1972 was enacted. The act was passed to provide protection to wildlife and purposes related to it. The appointment of all officers in managing and protecting the park is also derived from the act.

Since, Taman Negara is the centre of sustainable tourism attraction, it cannot be denied that most of the time tourists is given the priorities above others living things in the park. Tourist and recreational facilities namely hotels, rest houses, dwelling houses and buildings have been set up to meet the demand due to the influx of visitors. However, this provision which allow for the construction of buildings in the protected area should be criticised as it open a room for mismanagement of the power to regulate and control the development activities. In relation to that there is a guideline specified for the environmental impact assessment guidelines for development of tourist and recreational facilities in national parks. Thus, any development project is not allowed to proceed unless approval is granted. For that matter, any plan to construct tourist and recreational activities must ensure such construction will not give adverse impact to the ecosystem. Somehow, it is difficult to say that construction activities will not give impact to the flora and fauna in the park.

Mining activities is another activity which is allowed to be done within the area of Taman Negara. If it is found that a mineral deposit exists of such richness in the area within the park, the trustee may consent to issue license under the mining enactment to prospect such area. If mining activities is allowed, it should be monitored closely so to avoid destruction in the area or the area nearby. Apart from that other construction which is allowed to be done in the park includes roads, railways, aerodromes, dam and reservoirs. As a protected area, the environment and the natural beauty of the park are the asset and the main attraction of the industry (Khalid *et al*., 2008). Thus, the need to develop part of the park to facilitate the visitors needs to be properly regulated and park management need to be integrated in order to avoid destruction to the environment.

CONCLUSION

Several laws have been passed to manage and conserve the biodiversity hence promoting sustainable tourism activities in Taman Negara Malaysia. Implementation and enforcement of these legal measures is an important element in ensuring the natural beauty of the park. It can be noted however that there are rooms for improvement with regard to the management, planning and conservation of the park. Taman Negara transverse through three states and theoretically involves three different sets of management. Thus, all the management offices need to collaborate and contents of the management plan and policy must be integrated. Apart from that when ecotourism becomes part government policy, the authorities must equip tourists with relevant information on how to protect, value and respect the natural and cultural heritage of the park. In line with the concept of sustainable tourism, hoteliers or recreational facilities provider must play their part by conducting their business with minimal impact on the environment by promoting recycling and efficient water and energy use. This will ensure sustainable tourism activities that protect and conserve the biodiversity of Taman Negara for the benefits of future generations.

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