

## **Environmental Management and Sustainability: A Study on the Precautionary Principle in Malaysian Wildlife Conservation Law**

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**Abstract:** The used of the precautionary principle to the area of environmental management and sustainability, largely in response to the necessity of every each individual state to protect their rights and interests in order to safeguard the mother nature. Therefore, this study examines the used of the precautionary principle in the Malaysian wildlife conservation law in relation to the environmental management and sustainability from the legal perspectives, identify actions which deal with the protection to the environment as well as a tool for the achievement in sustainable development.

**Key words:** Environmental management, sustainability, precautionary principle, wildlife conservation, safeguard

### **INTRODUCTION**

Environmental management and sustainability as described many researchers is a mixture of various features of life including culture, social, economic and environment (Hadi *et al.*, 2007; Zainal *et al.*, 2011, 2012). Hadi *et al.* (2007) further defined environmental management and sustainability as a capacity to sustain the quality of life researchers value or to which researchers aspire. In operational words, it is usually analyses as ornamental the environment, social, cultural and economic well-being of current and future inhabitants (Hadi *et al.*, 2007; Zainal *et al.*, 2011, 2012). Environmental management and sustainability have been also submitted as related to the concept of sustainable development.

### **THE CONCEPT OF SUSTAINABLE DEVELOPMENT**

The concept of sustainable development has been defined by the World Commission on Environment and Development as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The above-said concept covers two essential scopes, i.e., environment and social aspects. This concept of sustainable development has been highlighted in the 1992 United Nations Conference on Sustainable Development in Rio de Janeiro as the results, Agenda 21 and Rio Declaration has been established. According to Sands (1995, 2003), Agenda 21 emphasises the following matters which include sustainable human settlement, population, consumption pattern, poverty and human

health. On the other hand, Mensah (1996) stated that the Rio Declaration addresses on mankind entitlements and rights which include health and productive life.

Basically, this concept of sustainable development has been an element in the international legal framework since early as 1893. According to the case of United States of America v Great Britain (1893) 1 Moore's Int. Arb. Awards 755, well known as Pacific Fur Seals Arbitration where in this case the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them for the benefit of human beings from meaningless destruction (Razman *et al.*, 2009b, 2010c; Emrizal and Razman, 2010).

Sands (1995) indicated that this concept of sustainable development is perhaps the greatest contemporary expression of environmental policy, commanding support and presented as a fundamental at the Rio Summit, Rio Declaration on Environment and Development in year 1992 (Razman *et al.*, 2011; Emrizal and Razman, 2010).

According to Article 33 of the Lome Convention 1989 states that in the framework of this convention, the protection and the enhancement of the environment and natural resources, the halting of deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the African-Caribbean-Pacific (ACP) states concerned shall strive to achieve with community support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future

generations (Razman *et al.*, 2009c, 2012; Emrizal and Razman, 2010) which include wildlife conservation aspects by promoting the precautionary principle to the area of environmental management and sustainability.

### **MALAYSIAN WILDLIFE CONSERVATION LAW**

Malaysia is a country rich with diverse species of flora and fauna. Besides that Malaysia is also a biodiversity hotspot area (Aiken and Leigh, 1992) and has a total area of 434,000 ha of National Parks to accommodate the diversity of flora and fauna. However, there are many species of endangered flora and fauna in the park (Khan, 1987). The Malaysian Wildlife Conservation Law is governed by the Wildlife Conservation Act 2010 (Act 716). Wildlife Conservation Act 2010 (Act 716) stipulated all of the provisions on the protection and conservation of wildlife in Malaysia. The Wildlife Conservation Act 2010 (Act 716) came into force on 4 November 2010.

Given the importance of wildlife have a lot of the people not only as food for animals in zoos or as a tourist attraction but it also contributed to the fields of bio-medical research (Nordin, 1991; Nordin and Hasnah, 1981). The role of wildlife is also important as pollinators agent (Janson, 1983) and as agents for spreading seeds of forest (Hladik and Hladik, 1969). The presence of wildlife in the ecosystem plays an important role in the stability of biodiversity. Thus, this study examines the implementation of the Wildlife Conservation Act 2010 in the environmental management of wildlife conservation towards environmental sustainability. Such study is important because it can help for better understanding the role of the said Malaysian Wildlife Conservation Law in order to achieve sustainable development by promoting the precautionary principle to the area of environmental management and sustainability.

### **PRECAUTIONARY PRINCIPLE**

According to Article 38 (1) of the Statute of the International Court of Justice, sources of the international law are:

- International conventions
- International custom as an evidence of a general practice accepted as law
- The general principles of law recognised by civilised nations
- Judicial decisions of the International Court or Tribunal

It is clearly that the general principles of law are being considered as the sources of the international law. Basically, there are seven general principles of law that concern with international environmental protection which is highlighted. General principles of law that concern with international environmental protection. Modification from Sands (1995):

- Precautionary principle
- Preventive principle
- Polluter-pays principle
- Good neighbourliness and international co-operation principle
- Common but different responsibility principle
- Principle 21 of the stockholm declaration and principle 2 of the Rio Principle

Therefore, this study will concentrate and discuss one of the above-said general principles of law which is the precautionary principle and this study will look into the role of the principle in protecting the environment in order to achieve sustainable development based on the international legal perspectives.

The precautionary principle gives direction and assistance in the development and appliance of the international environmental law where there is scientific doubt (Sands, 2003; Razman and Azlan, 2009; Razman *et al.*, 2010c). This principle derived from the traditional approach in dealing with international environmental protection. According to the traditional approach where all parties concerned have been called and these parties created their institutions in order to adopt and apply decisions that are found upon scientific evidences or knowledge and information accessible at that particular occasion (Harris, 1991; Sands, 1995; Razman *et al.*, 2010b). This traditional approach has been highlighted in the following international conventions that have been listed down. List of International Conventions that Required Scientific Evidence in Taking Actions. Modification from Sands (1995):

- International Whaling Convention (1946)
- Antarctic Seals Convention (1972)
- World Heritage (1972)
- London Convention (1972)
- Bonn Convention (1979)

Basically this traditional approach put forward that act shall only be taken where there is scientific findings that noteworthy environmental harm is taking place and on other hand in the absence of the scientific evidence, therefore no action may be necessary.

However in middle 1980s where a change of the traditional approach has been shown. Example of a change of the traditional approach has been shown include Ministerial Declaration of International Conference on the Protection of the North Sea, 1984 which allows states to take action without the scientific evidence of damaging effects since the damage of the marine environment cannot be remedial or irreversible for a short period (Sands, 2003; Razman *et al.*, 2009b, 2010b; Sulaiman and Razman, 2010). In addition the Montreal Protocol, 1987 which applies precautionary principle approach rather than the traditional approach where allows states to take action without the scientific evidence of damaging effects in dealing with controlling emission of (Chlorofluorocarbon) CFCs.

In 1990, the Bergen Ministerial Declaration on Sustainable Development in Economic Commission for Europe (ECE) region was the first instrument to link with the sustainable development principle and the precautionary principle (Mensah, 1996; Sands, 1995; Razman *et al.*, 2009c; Razman *et al.*, 2010a). According to paragraph 7 of the Bergen Ministerial Declaration on Sustainable Development, 1990 states that:

In order to achieve sustainable development, policies must be based on precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation

Since, the above-said declaration, there are a number of the environmental treaties that have adopted the precautionary principle into those instruments. In 1991, Bamako Convention has linked and put together the precautionary principle and the traditional approach where this formulation in Bamako Convention does not need to be irreversible or serious and lesser the entrance at which scientific proof might need action. According to the Article 4(3)(f) Bamako Convention, 1991 states that:

The preventive, precaution approach to pollution which entails, inter alia, preventing the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. These parties shall co-operate with each other in taking the appropriate measures to implement the precautionary principle to pollution prevention through the application of clean production method

As for parties involved in the Transboundary Watercourses Convention, 1992 agreed upon to adopt the same approach in Bamako Convention, 1991. Based on the Article 2 (5) (a) of the Transboundary Watercourses Convention, 1992 provides that:

By virtue of which action to avoid the potential transboundary impact of the release of the hazardous substances shall not be postponed on the ground the scientific research has not fully proved a causal link between those substances on the other hand and the potential transboundary impact on the other hand

Some environmental treaties do not specifically express in adopting the precautionary principle as part of their instruments but these environmental treaties noted the precautionary principle in their Preamble. For an example, the Biodiversity Convention, 1992 does not expressly specifically adopt the precautionary principle but in the Preamble of the Biodiversity Convention, 1992 provides that:

Where there is a threat of significant reduction or loss of biological diversity, lack of full there is a scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat

Moreover, the Earth Summit at Rio de Janeiro in the year 1992 has adopted the precautionary principle. It is clearly that shown and highlighted in the Principle 15 of the Rio Declaration. The principle 15 of Rio Declaration states that:

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation

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Based on the above discussion, according to paragraph 7 of the Bergen Ministerial Declaration on Sustainable Development, 1990 states that inter alia where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. It is clearly that the above-said provision tries to emphasize the adoption the environmental management and sustainability by promoting

precautionary principle in order to achieve sustainable development by using the words of should not be.

On the other hand, the principle 15 of the Rio Declaration provides that *inter alia* where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation. This provision of the Rio Declaration has highlighted that the application of the environmental management and sustainability by promoting precautionary principle in order to achieve sustainable development as mandatory based on the words of shall not be.

An additional essential transformation would be adopted by an interpretation of the precautionary principle, increasingly extensively held that would shift the burden of proof (Sands, 1995; Razman *et al.*, 2009a; Sulaiman and Razman, 2010). Based on the current approach that is the precautionary principle approach would shift the burden of proof and need the project proponent who intends to develop a project to bring evidences which the said project will not cause harm to the environment in order to attain sustainable development (Sands, 1995; Razman *et al.*, 2010c). Whereas the traditional approaches indicate that the burden of proof is on the shoulder of the party who oppose an activity. Later the oppose party to the said activity is required to bring evidences to proof that the said activity is likely to cause harm to the environment (Sands, 2003; Razman *et al.*, 2010b) in order to achieve sustainable development.

As for Malaysia is concerned, the Wildlife Conservation Act 2010 (Act 716) has adopted the precautionary principle approach, especially based on section 36 of the Wildlife Conservation Act 2010 (Act 716). According to section 36 of the Wildlife Conservation Act 2010 (Act 716) states that:

A licensed hunter who hunts any protected wildlife or a holder of a special permit who hunts any totally protected wildlife where applicable shall record in the appropriate space provided in the licence or special permit, the number, sex and species of the wildlife which was hunted, the date on which and the locality in which the wildlife was hunted, the methods or means by which the wildlife was hunted and the methods and date of disposal including the licence, permit or special permit number of the purchaser should the wildlife be sold (section 36)

Clearly that the above-said provision requires the licensed hunter to bring evidences in the form of a report which indicate that the hunting activities will not cause harm to the wildlife and environment in order to achieve

sustainable development and if the hunting activities is likely to harm the wildlife and environment, the licensed hunter is required to proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the wildlife environment (Razman and Azlan, 2009; Razman *et al.*, 2010a).

According to Malaysian experience on environmental management and sustainability focusing on wildlife conservation which has been discussed above, it is clearly shown as the state practice to attain sustainable development. The state practice has adopted precautionary principle approach in order to achieve sustainable development. Based on Article 38(1)(b) of the Statute of the International Court of Justice identifies state practice as the international customary law and this international customary law being classified as one of the sources of the international law. Finally, the precautionary principle approach may be considered as one of sources of the international environmental law as the principle position as a general principle of law and also an international customary law in order to attain sustainable development which include wildlife conservation aspects by promoting the precautionary principle to the area of environmental management and sustainability.

## CONCLUSION

The legal standing of the environmental management and sustainability by promoting precautionary principle in order to achieve sustainable development is still developing, at least, nevertheless there is enough proof of states conduct and put into practice to give good reason for the wrapping up that the above-said principle as highlighted in those above-mentioned treaties have recently acknowledged the satisfactorily extensive support to permit an excellent argument to be created which it reflects the legal standing to ensure the wildlife conservation aspects by promoting the precautionary principle to the area of environmental management and sustainability to achieve sustainable development.

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