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EXTENDED ABSTRACT BOOK

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Operational Framework for an Independent ICH Commission in Malaysia

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ABSTRACT

This paper addresses the fragmented legal and jurisdictional landscape governing intangible cultural heritage (ICH) in Malaysia. While the *National Heritage Act 2005* (Act 645) serves as the primary federal legislation, its implementation is hindered by conflicts with state laws, constitutional divisions of power, and competing normative orders. This study proposes and operationalizes a new, independent statutory body: an Independent ICH Commission. Employing a doctrinal legal analysis and a comparative approach with nations like Indonesia and the Philippines, the research identifies shortcomings in existing governance structures and proposes a practical solution. The main findings detail a comprehensive operational framework for the commission, including a multi-stakeholder composition with representation from federal and state authorities, indigenous communities, and academic experts. The commission's key mandates would include acting as a neutral arbiter for federal-state disputes, harmonizing heritage policies through a "Model State Heritage Law," and institutionalizing mandatory Cultural Impact Assessments (CIAs). A core principle of the framework is a shift towards genuine community empowerment by providing legal aid and support for community-led nominations. The paper concludes that establishing this commission as a statutory body with legal enforcement authority is essential to creating a robust, inclusive, and forward-looking heritage governance system in Malaysia that reflects the nation's cultural pluralism and unlocks its economic potential.

Keywords: Intangible Cultural Heritage, Heritage Governance, Cultural Policy, Statutory Body, Malaysia

1. INTRODUCTION

The safeguarding of Malaysia's diverse intangible cultural heritage (ICH) is a complex challenge within a legal landscape characterized by fragmented laws and overlapping jurisdictions. The *National Heritage Act 2005* (Act 645) provides a federal framework, but its effectiveness is often hampered by conflicts with state laws, particularly those concerning religious and customary practices. The existing heritage governance bodies lack the autonomy and mandate to serve as neutral arbiters in these intricate disputes. This paper addresses this critical gap by proposing and detailing an operational framework for a new, independent body: the ICH Commission. The objective is to move beyond critiques of the current system and offer a practical, actionable model to create a more cohesive and pragmatic heritage governance system. This framework draws on a review of pertinent literature and an analysis of international conventions to address the problem of legal fragmentation and institutional weakness.

2. METHODOLOGY

The central research question is: How can a practical and effective operational framework for an Independent Intangible Cultural Heritage (ICH) Commission address Malaysia's fragmented legal and jurisdictional landscape? This question is highly relevant to both legal theory and practice, as it addresses a critical gap in Malaysia's heritage governance system. The study employs a doctrinal legal analysis as its primary research method, which involves a meticulous examination and critical evaluation of the existing legal framework, including the National Heritage Act 2005 (Act 645) and relevant state-level legislation. This method allows for a deep and systematic analysis of the statutes, case law, and legal principles that contribute to the jurisdictional conflicts. To supplement this, a comparative legal approach is utilized, drawing on case studies from other Southeast Asian nations such as Indonesia and the Philippines to inform the design of a new framework. The research framework is structured as a problem-solution analysis, identifying specific issues within the current system and then proposing a detailed, actionable model for a new commission.

3. RESULTS AND DISCUSSION

3.1 The operational framework for the Independent ICH Commission is designed to overcome the key challenges of legal fragmentation, institutional weakness, and political constraints.

3.2 A firm legal basis is essential, which is why it is proposed that the commission be established as a statutory body or a tribunal through an amendment to the National Heritage Act 2005. This would grant it the authority to enforce its decisions and recommendations, moving it beyond a purely advisory role.

3.3 The composition of the commission is critical for its impartiality and credibility. Membership would be multi-stakeholder, including representatives from federal and state bodies (e.g., Department of National Heritage, State Islamic religious councils), indigenous communities (e.g., Center for Orang Asli Concerns), and academic experts. This ensures all relevant voices are heard and incorporated into the decision-making process.

3.4 The commission would have three key mandates:

3.4.1 Dispute Resolution and Mediation: The commission would act as a neutral arbiter for federal-state and community-state conflicts, with a multi-tiered process for mediation and a final tribunal-like authority to issue legally binding rulings.

3.4.2 Policy Harmonization and Coordination: The commission would proactively work to align federal and state laws. A key tool for this would be the development of a "Model State Heritage Law" to be adopted voluntarily by states, ensuring a baseline of protection while respecting regional nuances. The commission would also be authorized to review and comment on all relevant proposed legislation.

3.4.3 Community Empowerment and Participation: A dedicated Community Liaison Office would provide legal aid, technical support, and capacity-building programs to local communities, empowering them to drive the safeguarding process and participate in community-led nominations.

3.5 To address the challenges to operationalization, the framework proposes securing strong

political will and clearly defining the commission's powers in the amended Act. To overcome funding constraints, the commission would be funded through a dedicated parliamentary allocation or a national heritage fund. Finally, granting the commission legal and enforcement authority is the cornerstone of its effectiveness.

4. CONCLUSION

This paper has outlined a comprehensive operational framework for an Independent ICH Commission in Malaysia. The success of this new body is predicated on its multi-stakeholder and independent structure, clear mandates for dispute resolution and policy harmonization, and a commitment to community empowerment. By establishing the commission as a statutory body or tribunal with the legal authority to enforce its decisions, Malaysia can overcome historical political, jurisdictional, and funding constraints. It is recommended that future work should focus on legislative drafting and a feasibility study for a national heritage fund. The establishment of this commission is a critical step towards creating a robust, inclusive, and economically valuable heritage governance system in Malaysia.

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