

UNIVERSITI TEKNOLOGI MARA

**THE CONSERVATION OF HERITAGE
SITES IN PENINSULAR MALAYSIA:
REFORMATION OF THE LEGAL
FRAMEWORK**

AZNIBINTIMOHD DIAN

Thesis submitted in fulfilment
of the requirements for the degree of
Doctor of Philosophy

Faculty of Law

May 2018

AUTHOR'S DECLARATION

I declare that the work in this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and is the results of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulations for Post Graduate, Universiti Teknologi MARA, regulating the conduct of my study and research.

Name of Student	Azni Binti Mohd Dian
Student I.D. No.	2011161837
Programme	Doctor of Philosophy - LW99:
Faculty	Law
Thesis Title	The Conservation of Heritage Sites in Peninsular Malaysia: Reformation of the Legal Framework

Signature of Student



Date

May 2018

ABSTRACT

The issue of destruction of heritage site over the decades is still an unresolved subject until to date. After the introduction of Act 645, the public is expecting that it will be a forceful arrangement to preserve the heritage site from the intentional and uncontrollable destruction activities. Nevertheless, various reasons have been identified as the influential factors that contribute to such problems; lack of coordination between the heritage administrative bodies, broad discretionary powers of the Commissioner of Heritage and the Minister of Tourism and Culture in the designation and administration of heritage site conservation; and lack of empowerment of the people in both the heritage and planning legal frameworks. The objectives of this research are to examine the extent of coordination among the heritage administration bodies underlined by the present legal framework; to compare such legal framework with other similar legal instruments applied by some selected countries in identifying the strengths and weaknesses in the heritage site management; and consequently, to propose for a more holistic and feasible form of legal framework in Malaysia. This research adopts a qualitative method by conducting a library-based research to scrutinise the shortcomings of the National Heritage Act 2005, Town and Country Planning Act 1976, Environment Quality Act 1974, and selected state heritage enactments i.e. the Malacca Preservation and Conservation of Cultural Heritage Enactment 1988 and the State of Penang Heritage Enactment 2011. Interviews are conducted to retrieve information from the public officials in the federal and state heritage and planning departments, land registries and chosen heritage NGOs in Melaka and Penang. The theoretical framework is examined to understand the extent of public participation in the designation of a heritage site and its conservation management process. The states of Melaka and Penang are the primary case studies in this thesis. While in a contemporary era, a participatory democracy which is deemed significant to promote the idea of common good, its absence in a social and cultural perspective is evident in the preservation and heritage planning literature. Ultimately, it raised philosophical problems of selectivity, authenticity, interpretation, and recreation of the cultural heritage development. Among the issues discovered in this study are different preferences regarding what is worthy of conservation; the lack of an efficient public participation mechanism; lack of an integrated heritage conservation approach in the planning and environmental decision-making process; the different and conflicting interests of various stakeholders; power disparity; mobilisation of interest groups; and the lack of knowledge on heritage conservation. It is recommended that the integration of the powers and role of the Heritage Council and other relevant heritage administrative bodies are reinforced while the empowerment of the people is enhanced via the heritage site nomination, planning development, awareness, and education processes. As both land use planning development and heritage sites conservation processes have a common goal, that is, to promote sustainable development, they can be brought together in a common philosophy and practice.

ACKNOWLEDGMENT

First and foremost, praises and thanks be to Allah, the Almighty, for His showers of blessings throughout the duration of my research without which I would have not completed my studies successfully. This thesis also was made possible by the support and assistance of a number of people whom I would like to thank. I would like to express my sincere gratitude to my main supervisor, Associate Professor Dr. Nuraisyah Chua Abdullah, for her continuous support, constructive motivation, never-ending patience and invaluable guidance throughout the completion of this thesis and other related research works. Her dynamism, vision, sincerity and words of comfort have deeply touched and inspired me. My special thanks also go to my co-supervisor, Assistant Professor Dr. Azlinor Sufian, whose advice and guidance have always been helpful.

I am extremely grateful to my late parents for their love, prayers, care and sacrifices in educating and preparing me for my future. A special thank goes to my beloved husband, Syed Ahmad Radzi for his continuous support, encouragement and understanding. Words cannot express how grateful I am for all of the sacrifices that he made for my sake. His never-ending prayers for me are what especially sustained me thus far. To my beloved children, Izzaty, Izlan, Izrin and Izzuddin, I would like to express my heartfelt thanks for always been there cheering me up throughout my study. Their infallible love and support have always been my strength. Last but not the least, I would like to thank my brother and sisters for their constant inspiration and moral support.

At the University level, I would like to thank my close friend, Professor Dr. Jasmine Ahmad from the Faculty of Administrative Science and Policy Studies for her comments, suggestions and companionship throughout the process of my thesis writing. It also gives me a great pleasure to recognise the unreserved encouragement and guidance of the academic staffs from the Faculty of Law, particularly, YM Dr. Tunku Intan Mainura Tunku Makmar Nizamuddin, Associate Professor Rohani Mohd Shah, Dr. Normawati Hashim and Associate Professor Datin Dr. Musrifah Sapardi. I am also deeply indebted to my ex-students cum research assistants, Ahmad Afiq Bin Hasan and Muhammad Izwan Bin Ikhsan for their clerical and technological assistance throughout the journey of my research. To my fellow PhD candidates - Effa, Ida, Linda and Huda, thank you for the interesting discussion and companionship. I pray may their studies be made eased and be even more fruitful and rewarding. Indeed, these years were more entertaining with the present of these individuals. This thesis would not have been possible without the generous support from my *alma mater*, Universiti Teknologi MARA (UiTM), for giving me the 2-year, full paid leave to complete this study. At the industry and national level, my appreciation goes to the officers of the federal, state and local authorities particularly the heritage and planning departments; the Penang and Melaka NGOs; related individuals and stakeholders for their indispensable assistance in providing me with the relevant information and documentation for my thesis. Finally, my thanks go to all the people who have supported me to complete my studies directly or indirectly.

TABLE OF CONTENTS

	Page
CONFIRMATION BY PANEL OF EXAMINERS	ii
AUTHOR'S DECLARATION	iii
ABSTRACT	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vi
LIST OF CASES	xi
LIST OF LEGISLATION	xiii
LIST OF ABBREVIATIONS	xiv
CHAPTER ONE: INTRODUCTION	1
1.1 Background of Study	1
1.2 Problem Statement	8
1.3 Research Questions	14
1.4 Research Objectives	15
1.5 Scope and Limitation, of Research	15
1.6 Literature Review	16
1.7 Research Methodology	24
1.8 Significance of Research	25
1.9 Outline of Chapters	26
CHAPTER TWO: THEORETICAL FRAMEWORK	28
2.1 Introduction	28
2.2 Sovereignty in the People	28
2.3 Who are "People"	34
2.4 Social Contract: Representative Heritage Site Protection	37