

UNIVERSITI TEKNOLOGI MARA

**LEGAL FRAMEWORK FOR THE
SAFEGUARDING OF INTANGIBLE
CULTURAL HERITAGE IN
MALAYSIA: WITH SPECIAL
REFERENCE TO MAKYUNG AND
WAYANG KULIT**

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ABSTRACT

Intangible cultural heritage plays a key role in Malaysian social standing and contributes to the economic growth and preservation of identity. Due to the lack of literature on the legal aspects of intangible cultural heritage in Malaysia and specifically on Makyung and Wayang Kulit, this study fills the gap. Using primarily library-based approach and interviews, it is found that the performance of Makyung and Wayang Kulit concerns the matter of Islamic belief and are accused to be against the principles of Islam. The special position of Islam and the legislative power given to the Kelantan State Legislative Assembly led to the introduction of the Kelantan Control Entertainment and Places on Entertainment Enactment of 1998 and the 2003 Entertainment and Places of Entertainment Guidelines, which restraint the practice of Makyung and Wayang Kulit in Malaysia. This study extended the analysis on the National Heritage Act 2005 [Act 645] and concluded that the statute lacked the detailed framework for safeguarding intangible cultural heritage. The wide statutory powers of the Minister and the Commissioner necessitate the need for clearer selection criteria for the posts. Non-comprehensive definition of intangible cultural heritage led to the issue of the revitalisation of Makyung and Wayang Kulit, the administration and management of intangible cultural heritage within the Malaysian federalism system, financial concerns and promotion of intangible cultural heritage, particularly on Makyung and Wayang Kulit. Using the comparative method where benchmarking with Japan, Korea, China, Vietnam, Laos and Latvia, the study proposes that there must be a harmonisation of federal laws and the Kelantan state laws where the Kelantan State laws should include a legal framework on the safeguarding of intangible cultural heritage. It is suggested that there should be statutory provisions on direct participation from the local authorities, other agencies at state levels, including the district and land offices, religious authorities and the people as the living heritage, custodians and activists. All suggestions made are with the intention to better safeguard the intangible cultural heritage in Malaysia, with special reference to Makyung and Wayang Kulit with the full acknowledgement of the teachings of Islam and the position of Islam as the religion of the Federation, human rights and the right to livelihood of the multi-racial and multi-religions of the people.

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

This thesis is divided into seven chapters. Chapter 1 is the introductory part consisting of the background of research, problem statement, research question, research objectives, the scope of research and limitation of study, research methodology, and significance of the study. Chapter 2 is on literature review, which is divided into ten sub-headings. Chapter 3 is on theoretical framework, focusing on the notion of people; rights to self-determination and extent of empowerment; right to life; the role of state and power to control; and Islamic perspectives on intangible cultural heritage. Chapter 4 is on federalism system in the administration and management of cultural heritage preservation in Malaysia, focusing on the meaning of federalism, the federal jurisdiction on intangible cultural heritage, and the state jurisdiction on intangible cultural heritage. Chapter 5 is an overview of Makyung and Wayang Kulit and the related issues on the administration and management of intangible cultural heritage in Malaysia, including Makyung and Wayang Kulit. Chapter 6 is a comparative study on the administration and management of intangible cultural heritage from selected countries' legislation for benchmarking. Chapter 7 is the recommendations and conclusion chapter for this thesis. There are more than 14 recommendations for the betterment of legal framework for the safeguarding of intangible cultural heritage in Malaysia, in particular, Makyung and Wayang Kulit in Kelantan.

1.2 Background of Research

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (hereinafter referred to as the 2003 ICH Convention) was established on 17 October 2003. It has initiated a program on cultural heritage to safeguard intangible cultural heritage to ensure its viability. Scholars (most likely the convention participants) state that the responsibility to safeguard intangible cultural heritage is on the shoulder of the governing state party. Malaysia ratified the 2003 ICH Convention