National Heritage Act 2005 (Act 2005): Problems and Solutions from the Perspective betweenanother Countries

Nik Nurhalida Nik Hariry¹, FahirahSyaliza Mokhtar², NorAieni Haji Mokhtar³, Mohd SaifulIzwaan Saadon⁴

¹Faculty of Business, Economic and Social Development, Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu, Malaysia.
²Office of Legal Counsel, Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu, Malaysia
³Vice Chancellor Office, Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu, Malaysia
⁴Faculty Maritime Studies, Universiti Malaysia Terengganu, 21030 Kuala Nerus, Terengganu, Malaysia
nikelly6455@gmail.com¹, fahirah.mokhtar@umt.edu.my², noraieni@umt.edu.my³, saiful.izwaan@umt.edu.my⁴

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Abstract: This study discusses the problems and solutions to cases that occur in Malaysia. The heritage should be preserved for the next generation's gaze. To protect the heritage, the government has enacted an act. Prior to the National Heritage Act 2005, there were several acts already adopted. However, it still does not cover the whole section or regulation that can protect, conserve, and preserve the heritage and culture. The objective of this study is to make a comparative study of legislation by selecting multiple countries. This study used a qualitative study methodology, which is a library study and previous case study. The comparison between countries would be an added value in the provision of national laws in an effort to protect the nation's heritage.

Keywords: National Heritage Act, archaeology, maritime, legislation

1. Introduction

Normally, National Heritage Act 2005 (NHA 2005) was designed to enforce provisions for the conservation and preservation of national heritage, natural heritage, tangible and intangible heritage, underwater cultural heritage. The National Heritage Act 2005 has given a new breath on the status and position of the nation's heritage and culture (Yuszaidy mohd yusoff, 2011). Act 645 passed by parliament on 7 December 2005 and was approved by the Yang di-PertuanAgong on 31 December 2005. This act came into effect on 1 March 2006 by abolishing two previous Acts, namely Akta Benda Purba 1976 and AktaHarta Karun 1957. Both of these acts have their own weaknesses because they do not cover all sections or rules that protect, preserve, preserve and preserve the heritage and culture (Yuszaidy mohd yusoff, 2011). There were data showing 484 shipwrecked in Southeast Asia since 900 years ago (Hall, 1994). According to (Bee, 1999), only 5 percent of the archaeological rescue or archaeological process is either patent or not. Part of that, was stolen or taken unauthorized by the pirates. This raises the question of whether archaeological law is too loose in enforcement issues so that the historic objects on the seabed are taken away. For example, when treasure hunting activities continue to worsen, especially after the discovery of the shipwreck sites in Tanjung SimpangMengayau, Kudat (Baszley Bee Basrah Bee, 2008). The state needs a more comprehensive and comprehensive act in overcoming cultural heritage property (Yuszaidy mohd yusoff, 2011).

The Diana which sank in Tanjung Bidara on 4th March 1817. Diana was owned by Palmer and Co., a Calcutta agency house and licensed by the Honourable East India Company to transport goods from Calcutta and Madras to China and back. Palmer and Co. was owned by John Palmer, who at the time was the richest and most influential merchant in British India, though he later when bankrupt. Palmer, nicknamed the Prince of Merchants, lived in a lavish mansion in Lall Bazaar in Calcutta, a building which is now incorporated into the Kolkata police headquarters. The wreck of Diana and the cargo lay uninterrupted on the ocean floor for 176 years until discovered in late 1993 by Mr. Dorian Ball and other divers from his firm, Malaysian Historical Salvors (MHS). MHS had obtained a contract from the Malaysia Government to do search and salvage The Diana. It took three years of searching during which time eleven other wrecks were located before finally finding Diana in 35 metres of water. According to (Flecker, 2002), the porcelain from the 1817 wreck of the Diana, a Country ship lost in Tanjung Bidara waters, sold for about US $3 million at another Christie’s auction. Apart from the case of Diana shipwreck, there is another case of the shipwreck Tanjung SimpangMengayau wreck in Sabah which is one of the 'victims' of the pirates. The condition of the ship's skeleton and artifacts is criticisms due to treasure-hunting activities. In Sabah, there are two Old and Used Things Enactment 1977 and the Cultural Heritage Enactment (Conservation) 1997 used as a reference in protecting and preserving treasure.
Since 1996, the UNESCO's International Heritage Convention on the Underwater Cultural Heritage has been implemented to protect and preserve the underwater heritage of the world. The Convention declared the right to be regarded as an aquatic archaeological heritage to the seafloor country in the EEZ environment of 200 nautical miles. Underwater heritage carries the term of what forms of human underwater livelihoods such as treads, structures, buildings, artifacts and human remains along with a wide context and archaeology (Bee, 1999). It also includes the skeleton of the ship, the airplane, the form of a careless vehicle and its cargo that it includes in the archaeological and theological context.

It is very important in providing strict and strict protection to ensure the preservation of high-value heritage. (Yusoff, 2015) stated that the community as a whole has strongly consented to the drafting of laws because it has set rules that need to be followed and complied with. In addition, the formulation or creation of a legislation can give confidence to the public on security as it is reserved. But each country has its own legislation. This can be used as reference and improvement to national legislation, particularly in the National Heritage Act 2005.

2. The National Heritage Act 2005 (Act 645)

The National Heritage Act 2005 has stated that the heritage is divided into cultural heritage, heritage sites, heritage objects, underwater cultural heritage or any living person declared as a national heritage.

![Figure 1. Meaning of National Heritage](image)

In general, inheritance can be divided into four categories: cultural heritage, natural heritage, underwater cultural heritage and heritage of living people. Cultural heritage can be divided into two parts, namely tangible cultural heritage and intangible cultural heritage. Other than that, underwater cultures can be divided into two groups, namely underwater cultural heritage and subtle cultural heritage underneath. Legislation and enforcement are indispensable to protect all existing heritage.

The Government has enacted the Ancient Property Act 1976 (Act 168) by repealing the Act 542 (the Property Act 1952) except in so far as it applies to the treasure. The Purposes of the Ancient Property Act 1976 (Act 168) to provide for the control, preservation and investigation of old and historical monuments, land sites and ancient exiles, ancient objects and historical objects and their exports and for matters in respect thereof. Ancient Property Act 1976 (Act 168) applies only to Peninsular Malaysia only without enforcement to Sarawak and Sabah.

Excavation works or an archaeological work site must obtain a permit or license from the authorities as set out in Section 9. Section 9 states that no one may conduct excavation with the intention of discovering an ancient thing except under the license of the Director General (JMA Bulletin 2000). Application for a license is required to protect
the ancient objects stolen by an unanswered party. In addition, it facilitates monitoring of excavation works as it can produce new excavations. Excavation work sites will continue if they discover discoveries of ancient objects. This is the basis for gazetting the excavation work area to maintain and prevent from aggression. The full provision of Section 9 is as follows;

- Section 9: Subject to the provisions hereinafter mentioned, no person may conduct excavation with the intention of discovering an ancient thing, either on the land of which he is its native or resident or otherwise, except under the authority of the license granted by the Director General.

The government also prohibits invasion of monuments, historic objects and historical landmarks. This prohibition is intended to prevent the intrusion by unauthorized individuals or groups. The intrusion can damage and destroy monuments, historic objects and historic sites if there is no enforcement on it. The prohibited acts of infringement are set out in Section 16 stating that,

(a) Excavate land, conduct excavations, erect buildings, plant trees, stone mines, build lines, burn lime or carry on such works or place land or rubbish on or near old monuments or historic sites and establish or facilitate burial on site historic.
(b) Demolish an old monument or disturb, obstruct, modify, flag, collapse or transfer any such monument or any part thereof; or
(c) Make changes, additions or repairs to an old monument; or
(d) Establishing buildings or walls adjacent to an old monument.

**Enforcement of Penalties and Penalties**

The National Heritage Act 2005 is one of the acts used to protect and impose penalties in relation to heritage sites and heritage objects. Offense in respect of a heritage site provided for in Section 112 (1) (2) specifies the offense committed does not obtain the written consent of the Commissioner. Written permission is necessary when undertaking any activity on a heritage sites such as:

(a) Excavating, constructing, digging, building, planting trees, drinking, irrigating, and burning lime or depositing land or rubbish, above or in a heritage site or conservation area;
(b) Demolish, obstruct, obstruct, modify, flag, collapse or remove any monument on any heritage site;
(c) Establish any building or structure adjacent to a monument in any legacy site;
(d) Destroy the relationship between a building and the surrounding natural environment not in line with the characteristics of the neighbourhood on any heritage site;
(e) Cleaning any area or disturbing, destroying or removing any trees, plants, weeds, grass or plants in any heritage site; or
(f) To do any activity or action which may cause damage to the adjacent land and the surrounding land that has been registered as a heritage site.

However, an individual or group who commits an offense for breach the provision of Section 112 (1) is allowed for fines and imprisonment or under both. The provisions of subsection 2 stipulate that any person who, without lawful authority, violates subsection (1) commits an offense and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding RM5000 or both.

Further provisions regarding offenses are related to a heritage object stated in Section 113 to impose punishment on those who violate the deed it is intentionally or not to a legacy object. The penalties imposed shall not exceed 50 thousand ringgit and imprisonment for a term not exceeding five years or to undergo both depending on the court's decision. The full provision of Section 113 is as in the next: Section 113. Any person who destroys, damages, mutilates, dispose or alter a significant cultural heritage, without a permit issued by the Commissioner commits an offense and shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding RM5000 or both. The firmness of enforcement is crucial to awaken the individual and a group of government concerns over heritage treasures. Punishment fine and imprisonment is a step or action taken to prevent acts that violate the rules and protection of heritage treasures (Yusoff, 2015).

Section 114 (1) of the offense committed against Heritage Nationality. National Heritage is a high-value country heritage treasure has been elected and appointed as a state heritage officially registered in the list National Heritage.
National Heritage is reserved from trespassing, digging without license, issuing, and selling abroad. Provision completely Section 114 is as follows: Section 114.

(a) No person shall, without the written consent of the Commissioner, transfer, knock down, transfer, change, change, export, add to or manage any National Heritage except in immediate and immediate necessity for the safety of persons or property.

(b) Any person who contravenes subsection (1) commits an offense and may on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

Similarly, the offense violates the provisions set forth in Section provision 114 (1) may be liable to fine and imprisonment in accordance with the act. Wrong offense the rules prescribed for imprisonment shall not exceed 5 years and no fine exceeding 50 thousand ringgit or both. Nevertheless, the court may drop maximum imprisonment and penalties to raise awareness of how important it is heritage property for the country and society.

The provisions of Section 118 aim to impose penalties on an offense under this Act or any regulations or any regulations made thereunder. This Act which does not impose punishment can be punished harder and firm. Pursuant to Section 118 (1) of the first offense imposed sentence may be liable to a fine not exceeding RM50 thousand and imprisonment not exceeding 5 years or both. For a second or subsequent offense no longer compromises be liable to a fine not exceeding RM100 thousand or to imprisonment for a term not exceeding 10 year or both. The provisions of Section 118 (2) also state clearly the damage, invasion, and destruction of a heritage item require additional payment when the court rules the guilty. This payment covers the cost of repairs, repair and reconstruction of the heritage item.

Enforcement of penalties and penalties can be implemented best, the responsible parties can carry out their duties and roles in decisive efforts preventing leakage such as sale of artifacts on the black market and invasion on historic sites. Serious penalties as stipulated in the provisions the section in Act 645 illustrates the seriousness of the responsible and responsible parties discharging the responsibilities of maintaining and enforcing the law is adhered to by all parties. The passion for indirect enforcement has been successful reducing the occurrence of failure to comply with the law.

3. Different Perspective from Other Countries

In the various maritime laws around the world, there are various laws or regulations that can be applied and supplemented in Malaysian legislation. In the United State, there are several references that can be made. They were very careful and focused on the cases of shipwreck occurring in their waters National Maritime Heritage Act 1994 is a major milestone in the maritime archaeological legislation there. Thailand has imposed a law specifically for treasure hunters or pirates, under the Act on Prevention and Suppression of Piracy B.E 2534 1991.

The choice of US and Thailand countries is to represent the developed and ASEAN countries considering these countries have maritime archaeological legislation also a commonwealth countries. The purpose of selecting these countries is to look at the legal approach to addressing issues relating to the theft of historical objects theft at the heritage site. Hence, based on the analysis of maritime archaeological legislation in the United State and Thailand, it is hoped that this analysis could contribute to an improvement to the legislation in Malaysia.

**United State**

America is a country that exercises all the duties and responsibilities associated with the sea legacy. National Heritage is a department that regulates and enforces ships and treasures. Hence, Malaysia should emulate US in forming a maritime heritage commission with full authority over ships and treasures. The purpose of the establishment of a maritime heritage commission is to facilitate the regulatory process of conducting archaeological research either by museums or private persons and licensed commercial salvages. On the observation of the researcher, the involvement of many parties in determining an agreement decision will delay the final decision and long procedures lead to irrelevance and administrative mistakes. However, forming a special commission should be supported by a clear maritime heritage protection act stating its jurisdiction.

The United State is facing a complicated maritime archaeological development as treasure hunters are professionals. In order to preserve the US maritime heritage from being destroyed by the treasure hunters, two acts
have been the protector of the National Maritime Heritage Act 1994 and the Abandoned Shipwreck Act 1987. The National Maritime Heritage Act 1994 is an act of granting continuous funding to legacy conservation efforts United States maritime. Abandoned Shipwreck Act 1987 has eliminated the concept of finders' keppers found in U.S Admiralty Law. A concept that entitles treasure hunters to their discovery. This Act has granted the state government the abandoned shipwreck left up to 3 nautical miles.

This is because, the struggle to protect maritime heritage in Florida has failed. Following the many successes of professional treasure hunters and large capital companies in carrying out their legitimate activities based on Florida and Florida court orders have also been one of the best examples of other states, which is the most devastating place for maritime archaeology. Turning to the two acts, the act is said to be very effective because based on a case of Richard Steinmarz (1990) and Peter Theophanis (1995) was a great success of the US maritime archaeological and enforcement efforts but many more cases such as Atocha case, Margarita case, Andrea Daria case and the case of Lady Elgin on the side of treasure hunters. However, US professional treasure hunters have politicized the enforcement of the act. It has caused losses to the development of US maritime archaeology. In addition, it spread internationally when treasure hunters successfully influenced US representation in drafting the International Convention on the Underwater Cultural Heritage. As a result, representatives from the United States act without signing the consent to be performed if the individual or group of commercial salvage and sale of underwater heritage artefacts are not listed in the maintenance. There are several acts adopted by the United States in ensuring that artefacts are guaranteed ie:

i. The National Maritime Heritage Act 1994
ii. Abandoned Shipwreck Act 1987
iii. Brussels Convention on Assistance & Salvage at Sea
v. Protection of Wreck Act 1973

Thailand

The maritime law in Thailand has two forms of liability. The Royal Proclamation Establishing the EEZ of the Kingdom of Thailand 1981 and the Act on Prevention and Suppression of Piracy B.E 2534 1991. These two laws differ because one law focuses more on maritime zones, the Economic Exclusive Zone. The law is widely sought from UNCLOS (United Nations Convention on the Law of the Sea).

These extend 200 nautical miles (370 kilometres; 230 miles) from the baseline. Within this area, the coastal nation has sole exploitation rights over all natural resources. In casual use, the term may include the territorial sea and even the continental shelf. The EEZs were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The success of an offshore oil platform in the Gulf of Mexico in 1947 was soon repeated elsewhere in the world, and by 1970 it was technically feasible to operate in waters 4,000 metres deep. Foreign nations have the freedom of navigation and over flight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables.

Act on Prevention and Suppression of Piracy B.E 2534 1991 is more towards the act of preventing pirates or treasure hunters from invading the shipwreck area. This Act has 29 sections which have been formulated and agreed by the Thai King, King Bhumibol Adulyadej, on the advice and consent of the National Assembly.

The Gulf of Thailand, tended to be outside the sea - routes used by ships carrying large quantities of Chinese ceramics and precious metal cargoes. There is indeed an abundance of shipwreck in the Gulf, but the majority of those that have been discovered were carrying Thai ceramics (Flecker, 2002). In addition, there are two more ships in the Gulf of Thailand, The Pattaya Shipwreck and The KohKrada Shipwreck. The ship carries items such as wooden objects, stones and pottery. Such goods are prohibited by any party. Any person who attempts to commit any offence under this Act shall be punished as the offender based on Section 27. (Howits, 1975) states that every treasure that has been found will be placed in the museum. It aims to protect the treasures. In section 28, if any person who commits any offence under this act outside the kingdom shall be punished in the kingdom (Thailand) and Section 20 of the Criminal Procedure code shall apply mutatis mutandis.

The study of (Prishancit, 1992)shows that there is an information space due to the lack of complete discovery and the delineation of historical objects on the seabed by commercial fishermen and commercial rescuers without
permits. More sadly, most of the shipwrecked vessels had been infiltrated earlier and robbed. Among the shipwrecked ships were Pattaya Shipwreck, KoKhram Shipwreck, Klang - Ao Shipwreck and KoTalu Shipwreck. Information from the Fine Arts Department in 1991 stated that 35 shipwreck sites were discovered and studied according to maritime archaeological law approaches.

4. Conclusion

The real problem in Malaysia is due to lack of enforcement in terms of monitoring and implementation of punishments. Supposedly the punishments and penalties should be heavy. As in Thailand, they associate the Act on Prevention and Suppression of Piracy B.E 2534 1991 and the Criminal Procedure Code. Implementation of the law does not promise conservation efforts will be easy and secure. The reality of the law is not a limitation that cannot be violated by illegal treasure hunters or pirate. Perhaps large-scale and limited-tech activities can be trimmed but what about high tech-related activities such as the use of diving heritage vessels. It should be understood that this technology is easily available in countries like the United States by large catastrophic fortunes. What are the technology areas of the ASEAN countries capable of dealing with such field technology? Researchers do not intend to minimize the capabilities of ASEAN countries, especially the beloved Malaysia in the field of police and military but that is the fact.

Given that such a state requires a comprehensive and complete overhaul in all aspects. This is important in protecting, preserving also defending historical objects or artifacts on the sea rather than being stolen by property or trade (import and export). This is because there is not enough existing act and enactment to debate with the foreign national. The Government of Malaysia has taken a good and clear action by gazetting the National Heritage Act, 2005. This Act has been a guideline in all aspects of the legislation up to the administrative and management aspects of the cultural heritage. This Act is more comprehensive in all aspects and comprehensively.

In conclusion, the problem is in protecting and preserving defective artifacts on the underwater. Although there are various disturbing issues but the solution is still there. Emphasis on surveys is the best way to improve the legal aspects of protecting these historic objects. The researchers concluded that one party alone will not be able to develop this field alone. Not judged in terms of self-esteem in doing any research but seen from various aspects. The cooperation of each party should be focused on strengthening the maritime archaeological laws and stamping the problems faced in the future. Other country acts should also be used as references in the existing Act in Malaysia (the National Heritage Act 2005).

References