



**THE RESEARCH OF  
LEGAL SYSTEM OF MALAYSIA AND LEGAL INFORMATION  
RELATED TO SOCIETY, CULTURE, POLITICS AND  
SECURITY IN MALAYSIA**

**SPONSORED BY  
OFFICE OF THE COUNCIL OF STATE OF THAILAND**

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## Preface

This research is conducted under the consulting agreement in accordance with the project to create legal database of other members of ASEAN under the title of “Laws of Malaysia and Laws relating to Society, Culture, Politics and Security of Malaysia” (Contract No. 95/2558). The Foreign Law Office was assigned to carry out the ASEAN legal database project collecting and developing legal information of ASEAN Member States for the benefit of Thai entrepreneurs and Thai businessmen who aim to run the trading business and expanding investment to member countries. In the fiscal year 2013 and 2014, the Foreign Law Office has hired consultants to provide information on trade and investment law in ASEAN Economic Community; namely, Cambodia, Thailand, Brunei, Myanmar, Philippines, Malaysia, Vietnam, Laos, Singapore and Indonesia. In order to make the ASEAN legal database complete and covering all the three communities under the ASEAN Community, the Foreign Law Office hired consultants to study and accumulate legal information related to the social and cultural community and the political and security community of ASEAN. Thus, one of the six selected countries is Malaysia.

The research consists of 3 chapters. The Chapter 1 illustrates an overview of the social and cultural aspects of Malaysia. The Chapter 2 shows the political and security overview of Malaysia. Last, the Chapter 3 address the laws on society, culture, politics and security. In the last chapter, the content consists of laws related to the social and cultural community and the political and security community of Malaysia which includes education law, labour laws, public health law, social welfare, laws concerning the promotion of science, technology and communication, environmental law, law on promotion and preservation of culture and way of life, laws on bureaucracy enhancement, law on government proceedings, laws on public order and security control and laws on anti-corruption.

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## Chapter 1

### An Overview of Malaysian Society and Culture

#### 1.1 Introduction

##### 1.1.1 General Information of Malaysia

Malaysia is a country located in South-East Asian region. It consists of 2 main areas and has been separated by the South China Sea. The first area is the western Malaysia, which is located in the south of Malaya peninsula and Indochina peninsula. Malaysia consists of the 11 states, namely Pahang, Selangor, Negeri Sembilan, Malacca, Johor, Perak, Kelantan, Terengganu, Penang, Kedah and Perlis. The western territory of Malaysia shares with Thailand through Kelantan, Perak, Perlis and Kedah and also border with Singapore through Johor. The second area is the eastern Malaysia, which is located on the northern part of the Borneo island. It consists of 2 states, namely Sabah and Sarawak, which are adjacent to Indonesia, but Brunei is entirely surrounded by Malaysia's Sarawak state. Moreover, There are the 3 administrative districts under federal administration which consist of Kuala Lumpur as the capital city, Putrajaya as the city of bureaucratic administration and the Labuan island, which is a small island located on northeast of the Borneo island.<sup>1</sup>

##### 1.1.2 Overview of Malaysian History

Malaysia is a country which has a long history. Some parts of historical flow of Malaysia overlap or base on the same background with other mainland countries. However, the origin of Malaysian history can be obviously seen in the 15<sup>th</sup> Century<sup>2</sup> when Malakas was the superpower on Malaya Peninsular. According to the Malaysian historical background and its current geographical characteristic, which is on the sea trade route during the Mercantilist period and on the colonization route during the Colonialism period, the Malaysian history can be explained with the divided periods of 4 eras as follows:<sup>3</sup>

(1) The ancient kingdom era, the history at this time is the story of Srivijaya kingdom from the 7<sup>th</sup> to the 12<sup>th</sup> century, which had the city-state based on the Malaya peninsula.

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<sup>1</sup> Palin Phuweenapan, **Local Government of the Federation of Malaysia** (Bangkok: King Prajadhipok's Institute, 2013), p. 8.

<sup>2</sup> Barbara W. Andaya and Leonard Y. Andaya, Pranee Chadpolrath (translate), **History of Malaysia** (The Foundation for the Promotion of Social Sciences and Humanities Textbooks Project: Bangkok, 2008), p. 557.

<sup>3</sup> Virginia Matheson Hooker, **Short History of Malaysia: Linking East and West** (New South Wales: Allen & Unwin, 2003), pp. 3-11.

Sivijaya was the kingdom located on the crucial trading route between the 2 important kingdoms, namely China and India. The advantage of geography caused Sivijaya kingdom to accumulate the wealth from trading as a crucial city-port in maritime trading networks of the world. Alongside with cultural interaction with the outside world through cargo ships, it caused the Hindu-buddhist culture to become the main culture in Sivijaya kingdom. When Sivijaya kingdom declined, the main historiography moved to Malacca kingdom.

(2) The era of city-state based on the Strait of Malacca. The history at this period give information on the war under the purpose of dominating other city-states which were located on the Malaya peninsula and the Strait of Malacca to become a part of Malacca kingdom during the 15<sup>th</sup> to the 17<sup>th</sup> century. The growth of maritime trade caused the Malacca to become an international portal city which linked the trading of western countries of which Portugal was an important leader. Simultaneously, the trading of Middle East countries, of which Persia was the crucial leader, and the trading of eastern countries, of which China and India played a crucial role, was thereby connected. This trade route depended on the Strait of Malacca and Malacca kingdom as the commercial gateway. Furthermore, the historiography in the Malacca period pointed out to the promulgation of Islamic culture by muslim-Arab merchants and muslim-Indian merchants. The Islam's mission and giving trade assistance between muslim-Arab and muslim-Indian merchants and local elites in Malacca kingdom, it caused Islamic religion to establish in Malaysia, Indonesia and Brunei currently.

(3) The colonial era of British Empire, the Malaysian history at this time informed about the influence of British Empire on Malacca since 1786 until 1941. The main purpose, when the British Empire initiated making a relation with Malacca, was actually the trading. But later, when the western colonial empires challenged between each other and demanding of resources such as tin, from these reasons, the British Empire decided to interfere with politics of Malacca, and then, the British Empire occupied the Malacca kingdom as one of a colonial state. The detail of history at this time also described about political, economic and social structures that the British Empire has established for Malacca, including to the history in War World 2 period, when the Japan occupied over Malacca in short period. The historiography of Malaysia in this era was ended up by describing decolonization from British Empire that was led by communist party.

(4) The era of Malaysian state-nation formation, an official history of Malaysia has envisaged Malaysia as a modern nation-state emerging after 1965 which is in the period that Singapore announced for its self-government in order to be separated. The historiography at



this time usually informs the new political structures, gathering of political coalition for ruling country after decolonization such as emerging of United Malays National Organization (UMNO), including with the explanation of conflict, negotiation and cooperation between Malaysian ethnicities which induced to the solution from political conflict and violence.

### 1.1.3 Overview of Society and Culture

The Department of Statistics, Malaysia announced in 2014 that the population of Malaysia was over than 30 million<sup>4</sup>. Currently, the main ethnicities in Malaysia consist of 3 groups, namely Malay, Chinese Malaysian and Indian Malaysian who have mostly lived on the Malaya peninsula. For other ethnic minorities such as Iban, most of them have lived in Sarawak. The details of overview of society and culture have been summarized as below;<sup>5</sup>

#### (1) Ethnic group and nationality

The Malaysian society is a plural society, which composes of many kinds of population and ethnicity, namely Malay, Chinese Malaysian, Indian Malaysian and also Orang Asli, who is the indigenous people. Moreover, there are many ethnic minorities, who have lived in many states which have language, religion, culture, tradition and life style differently.

In the Chinese Malaysian group, they are mostly traders or businessmen, who have the economic power. For Malay citizens, they are proud of themselves as being the son of soil (Bumiputera), who has authority over the other ethnic groups in Malaya peninsula. The majority of Malay is farmer. For Indian Malaysian, they are mostly merchant and considered to have lower level of economic power comparing to Chinese Malaysian.

The indigenous citizen of Malaysia compose of 3 groups, namely (a) the indigenous people in Malaysian peninsula (b) the indigenous people in Sabah state (c) the indigenous people in Sarawak state.

(2) The language in Malaysia: there are many spoken and written languages in Malaysia, but the official language is Malaysian language or Bahasa Melayu. Moreover, there are Chinese, English, Indian and Tamil languages for communication.

(3) Dressing: the costume in daily life of Malay peoples both men and women have preferred wearing traditional costume, particularly elder women would wear hijab and modest dressing. However, the characteristics of Malaysian dressing rely on own nationality

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<sup>4</sup> Department of Statistics, Malaysia (Available in [www.statistics.gov.my](http://www.statistics.gov.my))

<sup>5</sup> Prayoon Akaraboworn, Public Administration of the Federation of Malaysia (Nonthaburi: Office of the Civil Service Commission, 2014), pp. 41-43.

and ethnic group, in order that, it could classify dressing into the indigenous dressing, Chinese Malaysian dressing and Indian Malaysian dressing.

(4) Religion: 60 percentages of Malaysian are Islamistes. For Chinese Malaysian, most of them are Taoist and Buddhist-Theravada. For Indian Malaysian, they are mostly Hinduism but some of them are Christian.

Malaysia has adopted the principle of Al-Quran from Islam to govern the country, for example, one of the requirements of being King or Sultan is to be Islamiste and such position would be considered as the highest on both religion and politics. For the purpose of administration, the Sultan would appoint the judges in religious courts, who have authority to sentence Islamic lawsuit. The religious courts have been controlled by religious department.

(5) Local custom and tradition: considering to characteristics of Malaysian society, it could be said that Malaysian society has extremely had ethnic diversity. It diversifies culture and life style in Malaysia. In each ethnic group, they also have traditions that represent the uniqueness, which reflects and presents through festival, celebration and folk plays

In Malaysian society and culture, the different area has different tradition, for instance, the Malay citizen relies on tradition in term of Adat Temenggong, which relies on patrimony. This Adat Temenggong tradition, which has operated since Malacca era, has been performed by most of states in Malaya peninsula (excepting Negeri Sembilan state). For Negeri Sembilan state, it relies on the Adat Minangkabau or Adat Perpatih tradition, which means matrilineal succession, namely hereditary succession operating by female line.

#### **1.1.4 Overview of Politics**

The democratic regime in term of Parliamentary system has been officially employed as the Malaysian political regime after independence. The internal administration is in the form of federal state. At the national level, the King is the head of state and the Prime Minister, appointed by the King, is the head of executives. For the legislation, Malaysia applies the bicameral system which consists of an upper house and a representative house. At the local level, there are also the executive and legislative bodies in each state.

The crucial political party is UMNO, which could control the majority in the legislation and has been ruling party continuously until now. However, the PAS party, as the opposition party, would be an important challenger and be higher influent in the political domain.

## 1.2 Social and Cultural Policy

The extent of this study aims to understand Malaysia at the present time rather than focusing the past. Consequently, the extent of social and cultural policy, both domestic and international policy, aims at the period since Malaysia has established its Nation State after liberating from the British Empire which is after A.D. 1963<sup>6</sup> when Malaysia was able to solve the problems of secession on North Borneo, Brunei and Singapore.

As stated above under the topic of “Overview of Society and Culture” together with the commitments under social and cultural agreements signed by Malaysia, all of policies and agreements can be described in details as follows:

### 1.2.1 Bumiputera or Son of Soil Policy

The Bumiputera or Son of soil policy is one of Malaysian frequently mentioned social policies. This policy was an important policy of Malaysia during social reconstruction era which provided social, economic, and political privileges to Malay citizen and aborigine latterly bringing about substantial effects to the society.

Bumiputera is an important notion which still has had an influence on Malaysian society nowadays. This notion does not only significantly influence on process of policy enactment, but also on social organization of Malaysia. The Bumiputera, in the first place, is a word used to call the Malays and aborigine which can be seen as Malay ancestor (Orang Asli)<sup>7</sup>. A straight meaning of Bumiputera is son of soil, but its meaning also implily reflects a difference between ethnic groups in the country including Chinese, Indian and other ethnic minorities in Malaysia. Bumiputera is a direct output of the British Empire that attempted to negotiate about political power with aboriginal people intending to make them accepted administrative power of the British government in Malaysia<sup>8</sup>. Granting privilege to Bumiputera more than any other ethnic groups helped a reproduction of this discourse in extending to command and control Malaysian society in many aspects comprising economic aspect, social aspect and political aspect.

On economic aspect, this notion gave rise to economic policy which granted vast privileges to the Malays. It grants them an employment opportunity ahead of any other

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<sup>6</sup> Ibid, pp. 471-472.

<sup>7</sup> Supakan Siripisan and Adisorn Saksoong, **Bumiputera: Conflict History and Country Development** (The Thailand research Fund: Bangkok, 2011), p. 24.

<sup>8</sup> Edmund Terence Gomez, **Politics in Malaysia: The Malay dimension** (Routledge: Oxon, 2007), p.5.

ethnic groups.<sup>9</sup> The policy also gives them various economic assistances via several projects and policies,<sup>10</sup> for instance, Bumiputera Economic Congress in A.D. 1965 which the government formed a way for Malay to be able to attain more funds by building the Bank Bumiputera that is the first commercial bank of the Malays aiming to help them to be able to obtain credits for establishing their own business. Moreover, after setting up the Bank Bumiputera, the government also founded the Council of Trust for Indigenous People in order to give personal loan to aborigine as well as Malay. In A.D. 2000, Malaysian government prepared a plan for support Malay on setting up their own business by the use of the Bumiputera Entrepreneur Project. This project's purpose is to further assist Malay in setting up their own retail business.

The Bumiputera concept also continuously had its influence on commanding economic policy which in A.D. 2003, Malaysian government lay down a plan to support and develop small and medium Bumiputera progressive entrepreneurs by assisting establishment of the Bumiputera Commercial and Industrial Community to be a place for gathering those entrepreneurs together. Then, in A.D. 2006, the government of Abdullah Ahmad Badawi made an announcement to found the Bumiputera Property Trust Foundation which had its starting fund in amount of two billion MYR. Because of the attempt of Malaysian government on supporting economy of the Malays, their economic status has been kept on growing, but, in the meantime, economic roles of any other ethnic groups was decreased, especially the Chinese Malaysian.

On social aspect, the Bumiputera concept has its role in laying the foundation of Malaysian education considerably.<sup>11</sup> The education system under the Bumiputera notion shall grant rights of access to university to Malay more than other ethnic groups. This system shall give quotas of access to the first-class public universities to Malay students bringing about the less competition in accessing to university of them. In the meantime, Malaysian government also enacted an Education Act 1961 for pushing forward Malay language to be an official language in Education management in university.

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<sup>9</sup> R.S.Milne and Diane K.Mauzy, **Malaysian Politics under Mahathir** (Routledge: Longdon, 1999), p.1.

<sup>10</sup> Apichet Karnchanadit and Sayan Sithichoke, **Research on Relation between Notion on Race and Political Policy of Amno's Party in Pluralism Society of Malaysia from Past to Present (A.D. 1946 - 2007)** (The Thailand research Fund: Bangkok, 2008), pp. 84-93.

<sup>11</sup> Murnkwan Renumard and Phuvon Boonyavetchewan, 'Races, Economic and Politic of Malaysia' 34: 1, 2013, **Rusamilae Journal**. pp. 67-74.

In addition, on political aspect, the Bumiputera concept also functions intensively, not different from economic aspect and social aspect, as can be seen from the Malaysian Constitution providing that the Prime Minister needs to be Malay or Bumiputera.<sup>12</sup> Additionally, most of large political parties also adopted this concept into their political activities, for example, the UMNO party requiring that their party members needed to be Bumiputera only, but later this strict measure was relieve by allowing other races of Malaysia to attain these positions too.<sup>13</sup> Whereas, the PAS party, an opposition party, adopted this Bumiputera concept intensively. the PAS party attempted to propose a policy transforming Malaysian society to be a religious state which Muslim Bumiputeras have their main role in the society.<sup>14</sup>

Due to an intergration of the Bumiputera concept into economic, social and political aspects; Malaysian society was shaped to mainly support the Malays. Nevertheless, this notion also caused several problems to other ethnic groups of the Malays living together with the Bumiputera, especially Chinese Malaysian. The problem concerning Chinese Malaysian was truly severe leading to racism problem which resulted in the most significant rebellion in the history of Malaysia in A.D. 1969 that will be mentioned further in following issue.

### 1.2.2 New Economic Policy

The New Econimic Policy which gave rise to structural adjustment of Malasian society via economic projects aiming to raise economic status of Malay citizen and aborigine. Conversely, these projects also decreased or oppressed status of other races living in the society.

From a problem of poverty of the Malays alongside with a problem of being unable to possess factors of production, the Malays could not keep the country's economic power in control letting it to be mostly controlled by Chinese Malaysian. On the contrary, the Malays were in control of the politic power. In A.D. 1970, the government announced the New Economic Policy and implemented it until A.D. 1990. This announcement partly meant that they acknowledged the economic problem, especially a problem on distribution of income in Bumiputera society. Futhermore, this policy did not only relate to an economic

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<sup>12</sup> R.S.Milne and Diane K.Mauzy, **Malaysian Politics under Maharthir**, 1999, p. 3.

<sup>13</sup> Apichet Karnchanadit and Sayan Sithichoke, **Research on Relation between Notion on Race and Political Policy of Amno's Party in Pluralism Society of Malaysia from Past to Present (A.D. 1946 - 2007)**, 2008), pp. 29-38.

<sup>14</sup> Edmund Terence Gomez, **Politics in Malaysia: The Malay dimension**, 2007, p.7.

development, but also related to restructuring process of the society attempting to mobilize the Malays to be able to reach Middle class.

The New Economic Policy is the policy that proposes several economic privileges for the Malays on macro economy level. From the policy, the government prepared a budget for supporting the Malays in founding and expanding their businesses. They also established several economic institutions intending to improve economic capability of the Malays, such as the Federal Land Development Authority, and the Rural and Industrial Development authority.<sup>15</sup> These institutions had their important roles in developing and transforming Malaysian rural areas which were the Malays dwellings by converting agricultural production into industrial-led growth. In addition, during an implementation period of this policy, lots of privatizations occurred. Because of this transformation, more of the Malays became shareholders of large enterprises. The businesses that was privatised can be divided into three categories<sup>16</sup> that is:

First category: State institutes responsible for handling public services, for example, waterworks, traffic, transportation, sanitation, etc.

Second category: Institutes established under the Act of federal or state, for example, National Industrial Development Organization, Tourism Development Corporation, Urban Development Corporation, Agriculture Development Corporation, and especially Malaysian Rubber Development Corporation and Petroliam Nasional Berhad(Petronas)

Third category: Public limited company which is a company that state and individual cooperate together and a company that state operates by itself, for example, Malaysian Heavy Industries Corporation, Malaysian Food Industry, Property Development Company , etc.

Thanks to this privatization, The Malays were able to take more important roles and higher economic status in several key institutes of Malaysia. Moreover, the New Economic Policy also paved a way for joint-venture between the Malays and the Chinese Malaysian by setting up the Ali-Baba project<sup>17</sup> which granted the Malays the rights to apply for a license in

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<sup>15</sup> R.S.Milne and Diane K.Mauzy, **Malaysian Politics under Mahathir**, 1999, p. 46.

<sup>16</sup> Supakan Siripisan and Adisorn Saksoong, **Bumiputera: Conflict History and Country Development**, 2011, pp. 81-82.

<sup>17</sup> Apichet Karnchanadit and Sayan Sithichoke, **Research on Relation between Notion on Race and Political Policy of Amno's Party in Pluralism Society of Malaysia from Past to Present (A.D. 1946 - 2007)**, 2008, p. 86.

starting up a business from the government, and let the Chinese Malaysian be investors and managers of the businesses.

On the microeconomic level, this policy provided helps for the Malays living in rural areas and agricultural areas in many ways, namely, establishing a diesel oil fund in order to assist the Malays fishery, intervention with the market by setting a minimum price of rice so that the merchant needed to follow, and compensating the farmer for fertilizer costs by spending government budget. In addition, several large development projects were occurred at the crowded areas of the Malays, for example, the Malacca Development Plan by Malacca State Development Corporation founding by the government.<sup>18</sup> The purposes of this project were to develop tourism, housing and commercial facilities in order to provide more economic opportunities for the Malays within this area so that they could be entrepreneurs of small and medium enterprises.

As previously mentioned, this New Economic Policy did not only had an effect on the economy, but also the society. That is to say, after the implementation of this policy, roles and social status of the Malays were changed. From A.D. 1970 to 1993, the percentage of the Malays becoming middle class was increased to 28 of all citizens.<sup>19</sup> The percentage of the Malays in agricultural works was decreased from 65.2 to 33.5. Jobs of the middle-class Malays were distributed among five main groups which are professional and technical, teacher and nurse, administrative and managerial, clerical, and sales (see Table 1.1). From this changes, social mobility of the Malays was easily arised, and they also were able to acknowledge that they had more social values than any other ethnic groups.

**Table 1.1: Employment by occupation and ethnic group in A.D. 2000<sup>20</sup>**

Occupation	Ethnic group			
	Bumiputera	Chinese	Indian	Other
Professional and technical	63.9	25.8	7.6	2.7
Teacher and nurse	73.2	18.4	6.9	1.5
Administrative and managerial	37.0	52.3	5.5	5.2
Clerical	56.8	32.9	8.6	1.7

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<sup>18</sup> Timothy P.Daniels, **Building cultural nationalism in Malaysia: Identity, Representation, and Citizenship** (New York: Routledge, 2005), p.35.

<sup>19</sup> R.S.Milne and Diane K.Mauzy, **Malaysian Politics under Mahathir**, p. 60.

<sup>20</sup> Jomo K.S, **The New Economic Policy and Interethnic Relations in Malaysia** (Geneva: United Nations Research Institute for Social Development Program, 2004), pp.14-15.

Occupation	Ethnic group			
	Bumiputera	Chinese	Indian	Other
Sales	37.3	49.8	6.8	6.1
Services	57.7	21.8	8.5	12.0

### 1.2.3 National Cultural Policy, 1971

After establishing its Nation State, there was **the National Culture Policy** delivered by National Cultural Council which was a policy that directly offered by state agency on social and culture. It can be said that this policy was an important framework in regulating other cultural policies of Malaysia in later days. The policy specified Malay-Muslim culture as a main culture in society and as a benchmark culture requiring any other cultures to adjust themselves correspondingly and properly with the policy.

The significant principles of the National Cultural Policy are culture of indigenous people and Islamic principle of Malay-Muslim which are the most important principles of Malaysian cultural development<sup>21</sup>. This policy was announced in A.D. 1971. The main principles of this policy clearly reflected an attempt of the government to control or restrict on subcultures, but at the same time promoted the value of Bumiputera and Islamic cultures to become main culture of Malaysian society.<sup>22</sup> Nonetheless, this policy became a sensitive agenda of the society because the society could not assimilate under this policy.<sup>23</sup>

The national cultural policy would be utilised after the National Culture Congress made an acceptance on three principles of the policy which are:<sup>24</sup>

First principle: National culture needs to arise from fundamental cultures of the locals of this region covering Malaysia, Indonesia, Philippines, Singapore, Brunei, Thailand and Cambodia. This principle puts more weight on shared characteristics between languages which specifically is Malay language that was commonly used within this region, so Malaysian culture was appropriate to be fundamental outline of the national culture,

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<sup>21</sup> Meredith L. Weiss (editor), **Routledge Handbook of Contemporary Malaysia** (London: Routledge, 2015), pp. 338-339.

<sup>22</sup> Timothy P. Daniels, **Building cultural nationalism in Malaysia: Identity, Representation, and Citizenship**, 2005, p. 213

<sup>23</sup> P.F. Chiok, C.C. Low and S.M. Ang, Malaysian Culture: Views of Educated Youths about Our Way Forward, International Proceedings of Economics Development and Research 48: 1, 2012, pp. 1-4.

<sup>24</sup> Official Website of the National Department for Culture and Art (Available in <http://www.jkkn.gov.my/en/national-culture-policy>)



Second principle: Other cultures that have suitable foundations might be recognised as parts of the national culture, so cultural bases of Chinese, Indian, Arabian, Westerner and others might be able to be considered and be recognised as parts of the national culture if acting in accordance with the provision in the Constitutional and moral values of Islam,

Third principle: Islamic principle is a major component in formulation of this national culture. Islamic principle provides ways to fulfill physical and spiritual needs of human, so this principle should be fundamental basis in formulation of the national culture.

Then again, there might be a need to mention the background context of the Malaysian National Cultural Policy in order to understand that this Policy was arose after the liberation of Malaysia from the British Empire colonization, so from the condition of society after the independence, reinforcement of culture for producing national consciousness was indispensable. Considering the purpose of this policy, the policy was enacted for strengthening national identity through culture, fulfilling socio-cultural needs, and fostering and preserving national identity created through national culture. Hence, the purpose of this policy reflected the problem of social inharmonization in Malaysia; on the other hand, it can be obviously seen that cultural territory under the Malaysian National Cultural Policy might only open for Malays-Islamic culture more than any other cultures. This arrangement might lead to hierarchy of cultures, then resulting in cultural lockout at last.

#### **1.2.4 1 Malaysia Policy, 2012**

The 1 Malaysia policy. From this policy, the government intended to encourage state agencies including Council of Ministers, government officers, and all state agencies to create racial harmony, raise unity of all people, and set up a country that every ethnic groups can stay together peacefully.

The 1 Malaysia Policy is the policy that was carried forward by Najib Razak, the Prime Minister of Malaysia. This policy was announced in A.D. 2012.<sup>25</sup> The purpose of this policy is to improve relationships of all Malaysians without discrimination against any races, religions, and background cultures. Additionally, the concept of this policy also relates to well-being distribution of all races of citizens by fulfilling any needs of all citizens in the society comprising various differences, which can be called plural society. The fair well-being distribution between races and between central and local government in Malaysia will be assurance. Moreover, this policy also attempts to create cooperation between races,

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<sup>25</sup> Ir. Dr Hasnul Mohamad Salleh. **1Malaysia - Concept and Values** (Putrajaya: Ministry of Energy, Green Technology and Water, 2009), p. 2.

believes, and religions in order to generate an interaction between races in Malaysia. It can be said that the announcement of this policy of Malaysian government partly was an acceptance of them on their national social problems, and those must be dealt with the policy on national level including this 1 Malaysia Policy which is absolute different social policy comparing to the Bemiputera concept. This policy does not aim to build a society in which only one race being dominant.

This policy specifies its core values for instilling into Malaysian society, namely, perseverance, acceptance, education, integrity, meritocracy, humility, loyalty, and culture of excellence.

The policy in detail can be divided into four main sections which are as follows:<sup>26</sup>

First section Overview detail: The 1 Malaysia policy aims to create diversity, increase access to oppotunities considering requirements and merit system more than background, improve quality of life, reduce crimes, enhance comfort and transparency of access to public services, raise quality of education of young children, provide efficient and comfortable urban transport system, provide infrastructure in rural areas, and support low-income households,

Second section Bumiputera community detail: The 1 Malaysia policy aims to improve access to business and education opportunity to the Bumiputera considering requirements and merit system, not personal relationship, and promote living standard in urban areas of the Bumiputera via structural designs for development of infrastructures,

Third section Business community detail: Most of this part is about enhancement of access to government service and transparency of government service, improvement efficiency of infrastructure for comfortable transportation of merchandises to consumer, and education for increasing skill workforce,

Forth section Civel servants detail: The 1 Malaysia policy aims to enhance efficiency and capability of civil servants in performing their duties, and increase civil servants opportunities in learning and applying their knowledge in order to invent new innovations and services.

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<sup>26</sup> The Prime Minister's Department of Malaysia, **1 Malaysia: Government Transformation Programme** (Putrajaya: The Prime Minister's Department of Malaysia, 2010), pp. 54-60.

### 1.2.5 National Policy on Women and Women's Development Action Plan, 2009

Under globalization trend that rights and freedom of people must be recognized, Malaysia also provided a policy about women rights in Muslim society which was **the National Policy on Women and Women's Development Action Plan**. This policy can be seen as an attempt of Malaysia to improve women role and status in the society in aspect of law, economy, employment, and role and ratio of women in political department.

National Policy on Women was stipulated in A.D. 1989 by the National Council of Women's Organization's action. This policy was carried forward by the United Nation Organization's operation at the UN Third World Conference on Women at Nairobi, Kenya in A.D. 1985.<sup>27</sup> Then, in A.D. 1997, the Women's Affairs Department in the Ministry of National Unity and Social Development expanded this policy from the National Policy on Women to be the Action Plan for Women Development which presented a commitment of Malaysian government in developing roles and status of women.

Besides the policy and plan, Malaysian government also laid down the policy on women within the sixth and seventh National Development Plan. The continuing works of Malaysian government on women's policy partly were a result of the ratification of Malaysian government on the Convention on the Elimination of All Forms of Discrimination against Women in A.D. 1995.<sup>28</sup>

Subject matter of the National Policy on Women is to increase participation of women on state decision-making processes, promote and build righteousness of viewpoints, thoughts and needs of women for filling in any government's project plan. A result from applying this policy was the role "Women's Affairs Liaison Officers" in any departments of all Ministry. Another clear-cut result of this policy was the establishment of government fund for women which is the Women Empowerment funds in order to raise and support women's development within Malaysian society.

Supporting and developing of women's roles had an significant impact on Malaysian society's structure because not only the women were able to access to jobmarket more, but they also were able to obtain more higher jobs in any institutes including political roles in Malaysia.<sup>29</sup>

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<sup>27</sup> Meredith L. Weiss (editor), **Routledge Handbook of Contemporary Malaysia**, pp.347-348.

<sup>28</sup> Cecilia Ng, Maznah Mohamad and Tan Beng Hui, **Feminism and the women's movement in Malaysia: an unsung (r)evolution** (Routledge: New York, 2006), p. 63.

<sup>29</sup> Meredith L. Weiss (editor), **Routledge Handbook of Contemporary Malaysia**, pp.350-354.

### **1.3 International Agreements on Social and Culture Made with other Countries or International Organizations**

On international level, Malaysia made several agreements on social and culture, but they barely ratified any agreement. Most of agreements they signed were created by the United Nation.

Consequently, the contents about international agreement on social and culture that Malaysia signed with other countries or international organisations insist of:

#### **1.3.1 Agreement on the Importation of Educational, Scientific and Cultural Materials, 1959**

Agreement on the Importation of Educational, Scientific and Cultural Materials is an agreement relating to cooperation in sharing and transferring educational, technological, and cultural knowledge between Member States. This agreement also assists in setting up academic activity in order to freely provide more understanding and pass on knowledge on education, technology and culture together.

The Agreement on the Importation of Educational, Scientific and Cultural Materials is the agreement that Malaysia succeeded from the British Empire in A.D. 1959 after the independence in A.D. 1957.<sup>30</sup> Subject matter of this agreement is exchanges of publication, object of artistic, scientific interest, materials of information. The Member States of this agreement provides these information in order to cooperate together in enhancing knowledge and understanding of people, and in raising free flow of idea by spreading books, publication, cultural information, scientific information and educational information freely among Member States.

Furthermore, this agreement also clarifies or regulates types and meanings of each kind of information which each Member State under the agreement must agree to let these informations flow freely within and between countries, such as, books and publication, official government publication, the United Nation's books or publication, publication supporting traveling between countries, and publication and documents for the blind. The Member States of this agreement need to increase an access to all kind of books, publication and documents for the blind including information specifically made for the blind which might need to import from other countries. State agencies must realize that this

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<sup>30</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XIV-2&chapter=14&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIV-2&chapter=14&lang=en))

is one of public services which the blind should be able to acquire. The Member States of this agreement need to provide these aforementioned educational, scientific and cultural information in public areas that people is able to obtain and access.

However, Malaysia has not obviously implemented such aforementioned principles whether by policy, regulation or law.

### **1.3.2 International Convention against Apartheid in Sport, 1986**

The International Convention against Apartheid in Sports which is an agreement attempting to eradicate the practice of apartheid in sports both in national and international levels, and attempting to lessen the violence that might arises from the problem of apartheid in sports.

The International Convention against Apartheid in Sport is an agreement that Malaysia signed on 16 May 1986.<sup>31</sup> Main purpose of this agreement is to show regular respect to human rights and fundamental freedom of all people without distinction in aspects of race, gender, language and belief by using sport competition as a center in building respect to all people without distinction.

Subject matter of this convention emphasizes on the importance of non-discrimination against races, religions, cultures and colours, in other words, realizing an anti-apartheid in sport. The governments of Member States under this convention must provide support in regulating sport rules without apartheid in any aspects. The apartheid under this convention includes system or something understood as institute of segregation, discrimination and racial domination.

The practices of Member States under this convention needs to intensively perform against apartheid via suitable devices in operating their policies against apartheid in sport. The Member States of this convention must not allow sport contact with any countries performing apartheid, and must provide appropriate policy in order to assure that their sport bodies, sport teams and individual sportmen will not contact any countries performing apartheid. Additionally, the governments under this convention must not provide monetary support or any other supports to sport bodies, sport teams and individual sportmen attending sport competition of any countries performing apartheid. They also need to provide policies for preventing their sport bodies, sport teams and individual sportmen of

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<sup>31</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-10&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-10&chapter=4&lang=en))

participation in sport activities of any countries performing apartheid. At the same time, the governments under this convention must refuse to provide any visas or any accesses of sport bodies, sport teams and individual sportmen who are representatives of any countries performing apartheid.

The Equal Right Trust Organization, an international independent organization, who monitors the situation of international human right has pointed out that the the International Convention against Apartheid in Sports had an influence over the Malaysian politics. This convention resulted in an amendment of the constitutiona in 2007. In other words, the articles 8 and 12 of the Constitution mention that all of citizen should be prevented from discrimination by any reasons of religion, race, descent and gender. However, the organization has analyzed that the domestic laws and policies of Malaysia have rarely followed the international agreements in term of equality, discrimination and human right.<sup>32</sup>

### **1.3.3 Convention on the Elimination of All Form of Discrimination against Women, 1995**

The policy on women of Malaysia partly was regulated from the pushes of international agreements signed by Malaysia. From these agreements on women, the government needed to add more roles and more policies on women. There were lots of international agreements on women signed by Malaysia, for instance, the Convention on the Elimination of All Form of Discrimination against Women which is a convention aiming to eliminate all form of discrimination against women that is both de jure and de facto discriminations. Civil officers, state institutes, private organizations and individual must not discriminate between genders in aspects of women's ways of life involving political, economic, social, cultural and family lifes.

The Convention on the Elimination of All Form of Discrimination against Women is an international convention signed by Malaysia on 19 July 1995.<sup>33</sup> Subject matter of this convention is to eliminate discrimination. The word "discrimination" of this convention impliedly refers to discrimination, segregation, restriction by the reason of gender. Under this convention, men and women should have the same human rights and fundamental freedom

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<sup>32</sup> Equal Rights Trust, **Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia** (Stroma: London 2014), pp.23-33.

<sup>33</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en))

in political, economic, social, cultural and other aspects. Women should also gain more international roles as representatives of their government and international organizations.

Subject matter of this convention is to support roles of women within the Member States, provide appropriate regulations about equality between men and women in the Constitution or other statutes, and provide regulations about protection and assurance on women rights. There should be no discrimination against women in all forms, especially state agencies must not discriminate against women.

Member States of this convention must ensure advancement and development of women roles in aspect of politic, economic and social. Moreover, They need to eliminate women trade and all form of exploitation from prostitution. On Educational aspect, the Member States of this convention must wipe out their previous notion which discriminates against women by revising their textbooks, studying methods and any other projects. Women must equally get their opportunities in access to any educational courses and scholarships. The Member States needs to provide proper policy for elimination of discrimination in employment against women.

This convention also contains interesting regulations about women within rural areas. The Member States have to consider problems that rural women face. The government is require to provide economic help to rural women; ensure that rural women are able to participate and gain profits from rural developments on health care, family planning, social security, literacy and technical training; and provide that rural women are able to cooperate in group or cooperative in order to increase their economic opportunities. Furthermore, this convention also covers infrastructure development , especially habitat, sanitation, electricity, water supply and transportation so as to suit women livelihood.

It can be said that this convention had many influence on regulating process of national policy of Malaysia. Since signing on this agreement, national policy on women was enacted, and development on roles of Malaysian women was widely spread throughout the s o c i e t y , for example, increasing the women role to participate in government policy formulation and implementation, increasing women officer proportion in all level of state organizations, including establishment the National Council for Women's Organizations. However, some principles of the Convention on the Elimination of All Form of Discrimination

against Women were inconsistent to the religion law (Sharia). Consequently, the women roles were limited in some occupation such as the judge in religion court and Imam.<sup>34</sup>

### 1.3.4 Convention on the Nationality of Married Women, 1959

The Convention on the Nationality of Married Women also was another agreement on women signed by Malaysia which is about the nationality of married women. Married women or divorced women who cannot obtain the same nationalities as their husbands between marriage, they will still be able to maintain their nationalities normally.

The Convention on the Nationality of Married Women is an international convention that Malaysia assented an accession or agreed to bind up with on 24 February 1959.<sup>35</sup> This convention aims to preserve women's nationality after marrying to husband with another nationality. Main regulation stipulates that marriage is not a reason to replace woman's nationality with husband's nationality, or if afterward husband changes his nationality, woman's nationality will not be changed along with her husband's. In addition, if husband voluntarily obtains another nationality, or abandons a nationality that he obtained, there will be no effect to his wife's nationality. However, if woman married to husband with different nationality requests to change her nationality to be the same with her husband's which she should has special privilege under naturalization procedures, the nationality changing process may be limited according to rules on state's interest and security, or public policy of each state. Additionally, Member States of this convention do not bind to amend their own legal statutes and system by following the provisions of this convention.

Even through Malaysia has ratified this convention, no policy or law was formulated in order to serve Malaysian women who got married with a foreigner. Those Malaysian women did not retain their nationality after marriage to a foreigner, and also the children, who were born from Malaysian mother and non-Malaysia father, were not entitled to employ mother's family name.<sup>36</sup>

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<sup>34</sup> Marsha A. Freeman, **Reservations to CEDAW: An Analysis for UNICEF** (New York: United Nations Children's Fund (UNICEF), Gender, Rights and Civic Engagement Section, Division of Policy and Practice, 2009), pp. 16-17.

<sup>35</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en))

<sup>36</sup> Marsha A. Freeman, **Reservations to CEDAW: An Analysis for UNICEF**, 2009, pp. 16-17.



### 1.3.5 ASEAN Human Rights Declaration, 2012

For the cooperation on social and cultural aspects agreed by Malaysia on regional level, ASEAN is an important international organization that Malaysia was accustomed with. Malaysia also signed for the ASEAN Human Rights Declaration which is an international agreement on regional level emphasizing on social and cultural topics, especially a topic of social and cultural rights. This agreement requires that ASEAN Member States need to provide rights to social stability and rights to setting up and participating in artistic and cultural activities.

Malaysian government leading by Najib Razak, the Prime Minister, signed on the ASEAN Human Rights Declaration on 19 November 2012. The purpose of this declaration is to spread human rights notion widely to the ASEAN Member States. The ASEAN has always been criticized by Western countries on human rights violation. Malaysia was also harshly criticized on this topic in the case of arresting and imprisoning Anwar Ibrahim, the Opposition Leader. Nonetheless, in order to jointly cooperate and create human rights practice, the ASEAN Member States together approved on this ASEAN Human Rights Declaration. Subject matter of this declaration consists of citizen rights, political rights, economic rights, social rights, cultural rights, rights to development and rights to peace.

General principles of this declaration provide that human rights and equality are fundamental principles that people shall get. Everyone is entitled to all the rights and freedoms without distinction of any kind, such as, race, gender, age, language, religion, political or other opinion, national or social origin, property, birth, disability, or other status. Rights of women, children, older persons, immigrant workers, vulnerable groups and marginalised groups are irrevocable rights and are integral part of human rights and fundamental freedom which cannot be dividable. All ASEAN Member States have their main responsibility in supporting and safeguarding all human rights and fundamental freedom.<sup>37</sup>

For citizen rights and political rights, rights and freedom of people on politics, having rights and freedom according to law, having rights and freedom to express opinion, having rights to social security are mentioned, for example, rules providing that people shall have the rights to vote, people shall have the rights to directly or indirectly participate in the government, people shall have the rights of peaceful assembly, people shall have the rights to freedom of opinion and expression, people shall have the rights to be free from arbitrary

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<sup>37</sup> Politics and Security Division, Department of ASEAN Affairs, **ASEAN Human Rights Declaration** (Bangkok: Department of ASEAN Affairs, Ministry of Foreign Affairs, 2013), pp. 21-27.

interference, people shall have the rights to seek and receive asylum in another state according to the laws of that state, people shall have the rights to freedom of movement and residence within the borders of each state, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, no one shall be held in slavery, servitude of all forms or subjected to human smuggling or trafficking in person, including for the purpose of trafficking in human organs, and etc.

There are three main principles of economic, social and cultural rights provided in this declaration, namely, providing welfare rights of employment, rights of free movement for workers, and rights to education, for instance, every person has the rights to work, to the free choice of employment, to enjoy just, decent and favourable conditions of work and to have access to assistance schemes for the unemployed; every person has the rights to form trade unions and join the trade union of his or her choice for the protection of his or her interests in accordance with national laws and regulations; every person shall have the rights to social security, including social insurance; every person shall have the rights to education; and etc.

For the rights to development part, the ASEAN Human Rights Declaration emphasizes on issue of development, especially the government development projects on economic, social and politic. All developments shall provide people's rights to participate in and benefit from those developments.

There is only a regulation of the rights to peace topic within this declaration providing that every person and the ASEAN people have the rights to enjoy peace within the ASEAN framework of security and stability, neutrality and freedom. The ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

The subject matter of this Declaration reflects social framework that will be changed and social standard that will be enhanced in aspect of rights and freedom, education, welfare, labour, development plan bonding with social change. For Malaysia as one of the founders of ASEAN, under Malaysian society intensively leading by Islamic principle, limitation of fully implementation of this Declaration might be arisen.

After signing the ASEAN Human Rights Declaration, Malaysia has been enthusiastic in achieving other human right cooperation such as ASEAN Inter-governmental Commission on Human Rights and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. This impulsion was a part of expressions before receiving the position

of ASEAN chairman in 2015.<sup>38</sup> In addition, the Rohingya refugee agenda which became a critical problem in term of human right in ASEAN, Malaysia played an important role to cooperate with the United Nations High Commission for Refugees for solving such problem, for instance, the attempt to allow Rohingya refugees, under a form of project, to live and work in Malaysia. Nevertheless, such project has never been implemented and, in 2013, the Malaysian government launched an announcement to terminate the project.<sup>39</sup>

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<sup>38</sup> Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, p.24.

<sup>39</sup> *Ibid*, pp. 32-33.

## Chapter 2

### An overview of the politics and the security of the Malaysia

#### 2.1 An overview of the politic and the security

The politic in Malaysia is such a fascinating and being attended by foreign scholars to study in the aspect of politic in the Muslim world and politic in Southeast Asia.

At first place, when the Malaysia politics can be taken into consideration from the political structure, it shall begin from the time, where the country was founded. After the end of British colonies era, it was the beginning of the monopoly of political parties that dominated the majority in the Parliament of Malaysia and it became unceasing Government since 1952.<sup>40</sup>

As abovementioned of the overview of the politics and the security of the Malaysia as well as political agreement or commitment, and security concerned which Malaysia has agreed with international organization relating to the policy and agreements as follow

##### 2.1.1 The Political and Administrative Structure of Malaysia

The political structure of Malaysia is a relatively complex. Because of the political backgrounds of Malaysia resulted from the unification of the territories which had different culture consisting of the territories which inherited the historical heritage from the ancient region (Perak State, Salangor State, Pahang State), the territories which were under the rule of Siam (Johor State, Kedah State, Perlis State, Kelantan State and Terengganu State), and territories which were divided and governed by the Britain during the British colonial era (Penang and Malacca)<sup>41</sup>. Because of the difference in terms of the history background, entailed National Government to rule the country in the Federal State system whereby each State has the local governments act in parallel to administrate the State. Malaysia is considered to be the flexibility in term of applying the administrative model in each area by way of allowing each State to customize the system and structure of government differently.

Malaysia is a country which has a various political structures because Malaysia is founded from amalgamation of States where they had been islands and major ports. Malaysia applied the federal regime developed from Federated Malay States: FMS to

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<sup>40</sup> Apichet Karnchanadit and Sayan Sithichoke, **Research on Relation between Notion on Race and Political Policy of Amno's Party in Pluralism Society of Malaysia from Past to Present (A.D. 1946 - 2007)**, 2008, p. 127-128.

<sup>41</sup> Nik Abdul Rakib Bin Nik Hassan, **The political and governmental structure and political leaders of Kelantan, Terengganu and Perak State of Malaysia and their influence on the Southern Thailand border provinces**, Thailand Research Fund, 2009, pp. 9.

Federation of Malaya. Prior to this, Malaysia combined administrative regime with the Monarchy system. As Malaysia has mutual agreement in organization of administrative regime, all of the States agreed to establish the democracy system with federal regime under the King as a head of State.

Therefore, understanding the political structure and governance of Malaysia, it is necessary to recapitulate from the time that Malaysia achieved its independence from England. The political system of the Malaysia can be divided into three categories as follow:

1. Malaysia Federation (Negeri-Negeri Melayu Bersekutu) is the unification of States in the system of Federal State. The federation has Central Government mandating from each State to be a government. There is a High Commissioner as the chief executive of the Federal. Each State also has its own government which it has Resident General as the head of the State. Regarding to the Straits Settlements, the High Commissioner of Central Federal empower to be the government of the State.
2. A Non-Federal Government States (Negeri-Negeri Melayu Tidak Bersekutu) are States that does not apply Federal Government system (Unfederated Malay States). These States used to be under the authority of Siamese. After the State is independent from Siamese authority, they can sustain the administration under the authority of Sultan and can govern with their own government. England, whose colonies, can only appoint consultants to participate in the government in such Unfederated Malay States Northern which are Johor State, Kedah State, Perlis State, Kelantan State and Terengganu State.
3. The Straits Settlement (Negeri-Negeri Selat) the States that were under the British authority as British colonies which are Penang State, Malacca State and Singapore State. Then Singapore was later separated and established as a country.

When Malaya Federation has been established, England decided to arrange for the independence of Malaya in August 31 1957. The first Prime Minister after received the independent from the Britain was Tunku Abdul Rahman. He had a vision to establish the Malaysia countries and his vision was successful in September 16, 1963, by unifying of Malaya, Singapore, Sarawak, Brunai and North Borneo (Sabah).

After the establishment of Malaysia Federation, the administrative system can be divided into two categories. One is the States that has their own government and another is States that do not have their own government. The States that has their own government consisting of the, Kelantan State, Terengganu State, Pahang State, Salangor State, Johor State, Kedah State and Perak State which their head of State are titled as Sultan. For Perlis

State, their head of State are differently titled as Raja. For Negeri Sembilan States, their head of State are titled as Yang Di Pertuan Besar. Among of these head of States will vote in their own group to be a King of Malaysia also known as the Yang Di Pertuan Agong with 5 year term. For States that does not have their own government which are the State of Malacca, Penang and Sabah-Sarawak will appoint the Governor of the State as their government<sup>42</sup>.

Because of the diversity of administrative system and the way of life of the people in each State entails Malaysia to adopt federal State system. Therefore each State also has its own Constitution (the State Constitution). Under Malaysia administrative system can illustrate the levels of administrative composed of The Kuala Lumpur Central Government and States Local authority of each State. The power of the government in each level can be classified as follow<sup>43</sup>:

The Federal Government has the authority to administrate the international relation, internal security, national defense, citizenship, financial, education, commercial and industrial.

The local Government has the authority to administrate Islamic law enforcement, agricultural and forestry, local administrative and local government agencies.

In addition, the central government and local governments entitle to share powers on the following matters: public service, conservation of forestry and wild animal, Scholarships, and irrigation

#### **A. The Monarchy System and the State Ruler in Malaysia**

Most of the State Government in each State adopts the monarchy system ruled by the King. The King in each State has particular title. Not only the monarchy system ruled by the King and State government, but Malaysia also included the centralization of the power of the King as the King of Malaysia also known as “Yang Dipertuan Agong”, which is constituted by the Constitution of Malaya in August 31 1957. It should be noted that becoming the King of Malaysia is different from the other monarchy system in the other country which descendants by inheritance or succession of the throne. The King of Malaysia is derived by voting with qualifications or criterion of seniority and suitability. The King of Malaysia is elected from the candidates and voted by King of the State (exception of Governor of the State shall not entitle to vote) holding position for five years term, enabling to resign or discharged from the position by Royal Ruler Council.

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<sup>42</sup> Nik Abdul Rakib Bin Nik Hassan, Malaysia: Unknown Neighbour Country in Journal of **Indo-Chinese Study** (Thai Neighbour) 8:1, ( Chonburi: Indo-Chinese Study Center, College of Public Administration, Burapha University, 2007), pp. 339-342.

<sup>43</sup> Ibid, pp. 342-343.

### **(1) The King of Malaysia (Yang Dipertuan Agong)**

The King of Malaysia is held to be the head of the State as the Commander in chief of the Malaysian armed forces, head of the Islamic State of Penang, Melaka, Sabah, Sarawak and Federal territory (Kuala Lumpur-Putrajaya-Labuan Island) and his own State. The King of Malaysia empowers to grant amnesty for military court in Kuala Lumpur and Labuan Island, but has no direct power in territories of other King's state.

### **(2) State Ruler**

Royal ruler regarded as the governor of the State who is titled differently, such as Sultan, Raja, or Yang Dipertuan Besar According to the State that is ruled by Governor (Yang Dipertua Negeri) is appointed by the King of Malaysia to be in the position of the ruler.

The selection of Royal Ruler relates the systems of succession descended from father to son by way of promotion. The Negeri Sambilan State, the ruler is promoted from four of Local Kings (Undang) (Jelebu, Johol, Sungai Ukong, Rembau)

### **(3) Royal Ruler Council (Majlis Raja - Raja)**

This Council consists of the Sultan and the Royal Ruler from the States (Yang Dipertua Negeri). The Royal Ruler Council was established in 1897 empowering to select the King of Malaysia and the secondary King. The Governor of a State is not entitled to participate in this Council. In the best of the other responsibilities of the council is to supervise the Malayu customs and Islamic Affairs except for Sabah and Sarawak State<sup>44</sup>.

In the political affair, the Royal Ruler Council entitle to receive the report of an appointed of the important positions such as judge, election commissioner, the Board of Directors of the civil servant and also entitle to participate in the decision and negotiation in deviating of the territory between States, expanding the Federal District, amendment of the Constitution, and referred cases of the privilege in Sabah and Sarawak areas<sup>45</sup>.

### **B. Institutions Exercizing Legislative Power**

Institutions that exercise legislative power in Malaysia can be divided into two levels, in other words, national entities and State-level legislative institution. In the part of the national entities, Malaysia can be divided into two parts consisting of the Senate (Dewan Negara) and the House of Representatives (Dewan Rakyat). Both of them have the duty to initiate and endorse a bill. Furthermore, there is also Legislative Assembly in the State-level legislative institution.

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<sup>44</sup> Ibid, p. 345.

<sup>45</sup> Ibid, p. 346.

## **(1) National Legislative Institutions**

### **(1.1) National Senate (Dewan Negara)**

The Senate is the highest Council to the Legislative Assembly of Malaysia. It is responsible for reviewing legislation that has been passed by the lower house. Members of the Senate consist of the 70 Senators from two groups. There is a 6 year-term:<sup>46</sup>

1. Members that have been selected by the State Legislative Assembly 2 members per State in total of 26 members. If the members in this group are elected to be President or Vice President of the Senate, they shall resign from member of the State Legislative Assembly

2. The members have been suggested by the Prime Minister and nominated by the King of Malaysia. These suggested and nominated members of 44 people are selected from the professional groups.

### **(1.2) The House of Representatives (Dewan Rakyat)**

The House of Representatives consists of 222 members<sup>47</sup>, who came from the election by the people as one person per one district. The House of Representatives consist of representatives from both Federal and State levels. Each candidate is allowed to apply for both levels. If the candidate wins the election for both levels, he will be appointed to both positions at once. The duration of members of the House of Representatives will be in such position for a five-year term. Whenever there is a vacancy, it would require the re-elections within sixty days. For the Sabah and Sarawak, the election must be held by the Council within ninety days. The Legislative Assembly mutually plays a crucial role together with the Senate in order to initiate and endorse bills. According to the constitution of Malaysia, the article 66 states that the Bill can be drafted by either the Senate or the House of Representative but it shall be eventually approved by both Houses. When a bill is approved by the House of Representative but is rejected by the Senate or is approved by the Senate with amendments, if the House of Representatives does not agree with the Senate's decision, the House of Representatives is still entitled to suggest the same bill to the Senate again. However, in case that the Senate still decides not to approve such bill or decides to give approval with amendments, such bill can be presented, by the House of Representatives, to the Yang di-Pertuan Agong for his assent.

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<sup>46</sup> The Constitution of the Federation Malaysia, 1957 (with amendment 2007), Article 44, 45 and 46.

<sup>47</sup> Ibid.



In any case, the constitution of Malaysia states, in the article 66, that the legislative procedure, under which the initiation of bill is empowered, is to be accomplished only by Senate, House of Representative and Government.<sup>48</sup>

## **(2) State-Level Legislative Institution**

Another legislative institution in Malaysia is “Dewan Undangan Negeri” or “DUN” which functions as “Legislative Assembly” exercising legislative power in the State level. There is a 5-year term if there is no dissolution as the Ruler empowers to declare the dissolution and re-election within 60 days from the day of dissolution of the Parliament. The Member of the Legislative Assembly in the State level can be served in parallel with Member of Federal legislative Assembly at the same time.

The role of Legislative Assembly in State-level consists of: drafting and passing law, approving the budget, appointing the State Auditor-General, qualifying representative of State Senate (to be promoted in the Federal positions), and considering the other activities of the State. The remarkable of this Council is the privileges of the member such as the privilege to perform actions within the Legislative Assembly could not be sued in any court. Members of the national legislative Assembly cannot be prosecuted from speaking, voting or published from the Legislative Assembly.

## **C. Institutions Exercizing Executive Power**

Institutions Exercizing Executive Power in Malaysia are divided into two parts which are the Federal Government and the State Government. Under the Parliament System, government or administrative body is acted by the Prime Minister as the head of Government selected from the members of the House of Representatives. The Prime Minister empowers to appoint ministers from members of the Senate or House of representatives.

The Cabinet consists of the Prime Minister, Ministers and Deputy Minister. The meeting of the Cabinet will appoint only the Prime Minister and the Minister.

The administrative at the State level, the Federal Constitution authorize the Royal ruler and Governor of the State with the power to administrate through the guidance of the administrative section which has the Royal ruler's counselor as a chief of the administrative body. The title of the State Government will be called differently categorized by the administrative feature, such as, State ruled by Royal ruler called Menteri Besar or State that does not be ruled by Royal ruler called Ketua Menteri. For the Council of State called Majlis Mesyuarat Kerajaan Negeri and the member of the council are called by local people as the Executive Committee or in Sabah State called Menteri Pertanian Negeri Sabah, in Sarawak

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<sup>48</sup> The Constitution of the Federation Malaysia, 1957 (with amendment 2007), Article 66 and 68.

State called their council section management that Council (Majlis Tertinggi: Supreme Council), which is the management function of State administration in general.

#### **D. Institutions Exercizing Judicial Power**

The judicial system of Malaysia has adopted the English judicial system, namely the common law, which has been integrated during the time that Malaysia was under the British colonization. Under the separation of powers, the Malaysian judiciary is highly independent due to the circumstance of not being controlled by any of institutions exercising executive or legislative power.

Malaysia employs the single court system, other than the court system as stated above which is similar to other countries in the world, Malaysia has a specific judicial system consisting of Islamic Court, which has the jurisdiction over religious matters including any matters affecting directly to the religion and any facts inconsistent with the Islamic regulations such as marriage, divorce and inheritance. The jurisdiction of the Islamic Court is over the Muslims only and, whenever there must be an appeal, it can be submitted only to the Sultan of the state. In other words, no appeal can be raised to the Supreme Court.

Moreover, there are another type of court which is Native Court. The Native Courts are situated in Sarawak and Sabah states under the reason that most of the population living in such states usually has different ethnicity and culture from Malaya people who live in Malaya Peninsula. Thus, the Malaysian government established the Native courts in order to conduct trials. However, the court jurisdiction would be complete only in the case that both parties in disputes are native people.<sup>49</sup>

#### **E. Major Political Parties in Malaysia**

Regarding to the political party that is considered as an important mechanism in the political movement of Malaysia may divide into two parties which are the National Liberation Party, a group of several political parties joining the Alliance in support of the Government foundation of United Malays National Organization so called UMNO, and the people's Alliance Party Group, which is a group of the opposition parties leading by the Islamic party (Parti Islam SeMalaysia). Both of these groups of political parties are affiliated with no less than 10 political parties.

Malaysia can be considered as a country with a diversity of culture and ethnicity. Political parties of Malaysia are a good reflection of how the community of Malaysia is diversity. Political parties in Malaysia are often established from the associated within the racial group, by meaning that political parties are often set up as to be a representative of the different racial group in Malaysia. Taken into consideration of the political parties of

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<sup>49</sup> Palin Phuweenapan, **Local Government of the Federation of Malaysia**, 2013, p. 36.

Malaysia as it relates to the certain racial groups, it may be categorized the political party of Malaysia as follow.

### **(1) Political Parties Supporting the Malayu Muslim**

Political parties in this group have political activities that support a group of Malaysian Malays as to encourage Malays citizen which are the most of the population to their supporters for the election. The examples of this political group, such as United Malay National Organization (UMNO), United Traditional Bumiputera Party (PBB), United Sabah Party (PBS), Sarawak Peoples' Party (PRS) Parti Islam SeMalaysia (PAS)

### **(2) Political Parties Supporting the Malaysian Chinese**

Political parties in this group have political activities that support the interests of Malaysian Chinese as well as protect the financial interests for Malaysian Chinese. The examples of this political group, such as Malaysian Chinese Association (MCA), Democratic Action Party (DAP), PartiGerakan Rakyat Malaysia Liberal Democratic Party (LDP)

### **(3) Political Parties Supporting the Malaysian Indian**

The group of political parties represents the Malaysian Indian. They have the political activities similar as political parties supporting the Malaysian Chinese which are protecting the interests and bargaining for the wellness of the Malaysian Indian. The examples of this political group, such as Malaysian Indian Congress (MIC), Kongres IndiaMuslim Malaysia (KIMMA)

#### **2.1.2 Islam Hadhari: Civilizational or Progressive Islam**

Malaysia's political policy under the governor of the AMNO party is subject to racial. It can be said that when government assigns the policy relating to the political matter, the racial matter is always involved **Islam Hadhari**<sup>50</sup> is a policy that endeavor to apply and analogy the islamic principles as well as interpret its meaning as to yield with other group of racial living together with Malay. Hadhari designates the administration of the government to comply with the moderate practice of Islamic principle that is peaceful just and sympathy to all other race and religion and willing to protect the minority and women's rights.

After the British colonial revolution, Malaysia has endeavored to restructure Malaysian society to centralize the cultural and racial diversity under concepts of Bumiputera. This conceptual can be described as the earlier period of the centralization of the cultural and racial diversity among the majority of the Muslim. The issue brought up later to the established of Malaysia was Islam is the national religion, or religion which entailed the key mechanism for Malaysian society-driven in various aspects including social, economic and politic. Islam is one of the factors driving the Malaysia society. To illustrate

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<sup>50</sup> Meredith L. Weiss (editor), **Routledge Handbook of Contemporary Malaysia**, 2015, p.64.

this, the idea of founding the Islamic Conference organization (OIC) in the period of the Prime Minister Tuan Guru Abdulrahman or supporting the unity of living under the diversity in the period of the Prime Minister Mahathir Mohamad which caused Islam becoming the center for stabilization of Malaysia.

In the period of the Prime Minister Abdullah Ahmad Badawi of United Malays National Organisation party (UMNO), an essential framework of Islam society in Malaysia was introduced. The attempt to create Islam society integration under the policy called Islam Hadhari by meaning of Civilizational. Thus, Islam Hadhari is the development of Islam society for adaptation toward the modern civilizational

This concept attempts to develop Malaysia society to be the Islamic state and concentrates on the development in efforts of civilization and progressive of the Islamic community. And encourage the existence of social in the globalization has changed frequently. The leader of Malaysia's attempts at that time is to create a balance within the Islamic society, balance and stability, both in the physical and spiritual aspects<sup>51</sup>.

Thus, Prime Minister Abdullah Ahmad Badawi endeavored to propose the development of Malaysia under the holistic development, which focuses on balancing the religion integration with modern science. In addition, the concept of Islam Hadhari also endeavored to change the based view point to the Islamic social, which often is described as a conservatives society that resist the revolution. As a result, Malaysia endeavored to change this view point by establishing the development of modern Islamic society to be ready for globalization. But at the same time, it does not abandon the principles of Islam<sup>52</sup>. Basic principles of Islam Hadhari contributed the 10 conceptual for Malaysia people, namely<sup>53</sup>, (1) Faithful and adhering to Allah, (2) Fairness of the Government, (3) The liberty of the people, (4) Aim at intellectual knowledge, (5) Economic development with the equilibrium and global reach, (6) A better quality of life, (7) To protect the rights of minority groups and women's rights, (8) Good culture and morality, (9) Protection of the environment, and, (10) Protection of the State security. These conceptual attempt to adjust the idea of the people in the Malaysia society to be able to face the global competition, and in order to initiate the change in the Muslim society in all aspects.

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<sup>51</sup> Mohamed Sharif Bashir, **Islam Hadhari: Concept and Prospect** (Online available in [www.researchgate.net/publication/236979375](http://www.researchgate.net/publication/236979375)), 2005.

<sup>52</sup> Ioannis Gatsiounis. Islam Hadhari in Malaysia, **Current Trends in Islamist Ideology** 3, 2006, pp. 78-79.

<sup>53</sup> Mohd Azizuddin Mohd Sani. A comparative analysis of Asian values and Islam Hadhari in Malaysia, **The Asian Journal of Humanities** 15, 2010, pp.12-13.

### 2.1.3 Racial Conflict Riot in 1969 and Internal Security Act

According to the internal conflict of the racial issue that caused major riots within Malaysia, the protests of Chinese Malaysian led to violence and clashes between Chinese Malaysian and Malayu Malaysian. The riots ended up with the government officials suppressed Malaysian Chinese protester causing a number of the protester have killed. This incident led to the intensive practice of Malaysia's internal security policy. **The internal security act** obviously regarded as the output from an intensive security policy. The law empowering the Government to deal with issues that will jeopardize to national security, or threatening peace life or property as well as the public order and unification among racial living together in Malaysia<sup>54</sup>.

#### A. Racial Conflict Riot in 1969

Racial Conflict Riot in 1969 can be described as a conflict leading to the critical riot in the Malaysia history. As a result of this incident it triggered the policy and measure in prevention of racial conflict in the Malaysian society including the stabilization of rigorously internal security policy of the Malaysia Government.

The conflict of the racial in the Malaysian society arose from the social diversity of Malaysia. This is because Malaysian society comprise of the three major group of racial which the first group is Muslim Malaya and the indigenous groups so-called Bhumiputra. From the population survey (Census) in 2010 this group is the most populous group approximately 67.4 percent. The second group is Malaysian Chinese group has 24.6 percent from the population. The third group is Malaysian Indian group has 7.3 percent from the population. And other racial such as Malaysian Thai and the refugee is 0.7 percent<sup>55</sup> from the population. The diversity of the racial in Malaysia social influencing from three factors which are geographical factor, historical factor and economical factor

The geographical factor, since Malaysia is located on the Peninsula, that the Malacca strait is an important nautical route, thus trading, the associating as well as settlers of foreigners such as Chinese Westerner Middle-easterner etc. often occurred.

The historical factor, the battle between the City State and Kingdom, especially the Kingdom of Siam and the Kingdom of Pattani caused the movement of population and

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<sup>54</sup> Apichest Kanchanadit and Worachat Chareonpol, **The Political Movement of SUARAM for Anti-Internal Security Act in Malaysia (1989 – 2009)**, Thailand Research Fund, 2010, pp. 27-38.

<sup>55</sup> Department of Statistics, Malaysia (Available in [https://www.statistics.gov.my/index.php?r=column/cone&menu\\_id=ZHJlbWFBSTVEcHY1ait6akR3WmtVUT09](https://www.statistics.gov.my/index.php?r=column/cone&menu_id=ZHJlbWFBSTVEcHY1ait6akR3WmtVUT09))

territory. Therefore it caused the northern area of Malaysia where the territory is in connection with Thailand consist of a number of Malaysian-Thai population<sup>56</sup>.

Economic factors, during the British colonization, it rose the demand for labor in both the mining industrial and the large scale of harvest such as rubber plantation, including other British industries. Such requirements influenced the English who ruled Malaysia certified status of Malaysian citizen for the Chinese and Indian immigrants. Hence it caused a wave of Chinese and Indian immigrated into Malaysia and caused the Malaysia society consists of three major of racial groups as above mentioned<sup>57</sup>.

The major issues caused the conflicts and leading to the riots in Malaysia triggered from Malaysian Chinese and Malaysian Indian enabled to enter into the economic system and possessed various of capital goods including their standard of living is better than the average of Malayu. Such a situation, emerged the UMNO party, which is the political party represent the Malayu and as a political parties that long-term formed the Government to introduce the concept of BhumiPutra implanted in the policy of the State. Such a concept crucially empower the privilege to Malaysian Malays resulted in Malaysian Chinese and Malaysian Indian were diminished their role and loss their economic and social benefits.

A representative group of Chinese people in Malaysia such as Lee Kuan Yew who is the leader of Malaysian Chinese political group attempted to appeal for their benefits of Chinese people. It resulted of the banishing Singapore from the Malaya Federation. This incident increased the conflict between Malayu and Chinese people in Malaysia. Since Malayu people considered the Chinese as a communism, the untrusted and loathe between the racial has continued for more than 10 years involving with the Malayu massacred by Chinese or a Chinese student killed by State officials. Nevertheless the incident that is considered to be the beginning of the major riot was a group of Chinese came out to celebrate the results of a general election in 1969 that the opposition party succeeded in increasing more seats in Parliament meanwhile the party of the leader in the Government has gathered people to come out and celebrate the victory of the Government party. This action provoked the conflict between the two groups, leading to the riot starting from Kuala Lumpur and spreadt to the major city for more than two months. The Malaysia Government at that time had to declare the repudiation of Constitution and established the National Operation Council allowing the Government to use armed forces in suppression of the riot.

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<sup>56</sup> Barbara W. Andaya and Leonard Y. Andaya, Prannee Chadpolrath (translate), **History of Malaysia**, 2008, p. 106.

<sup>57</sup> Supakan Siripisan and Adisorn Saksoong, **Bumiputera: Conflict History and Country Development**, 2011, pp. 34-37.

At the end the official announced that 196 people were killed (however the unofficial announced possibly 600 people were killed) and 5,561 were arrested in this incident<sup>58</sup>.

The incident influenced the Malaysia Government initiating the policy to resolve the conflicts between racial. As it can be seen from the social policies as mentioned in the first part, but at the same time, an internal security concerned still strictly applied in Malaysia society.

### **B. Internal Security Act, 1960**

Malaysia is quite a sensitive country about politic and social due to their diversity of races and their difference of cultures of people in each state. An important national security policy of Malaysia using to resolve internal problem within country is the Internal Security Act 1960.<sup>59</sup> This Act reflects an intergration between Modern and Traditional ideas. This Act formerly was an important law that the British Empire operated as administrative rule governing Malaysia, because the British Empire had always been faced several problems, such as, piracy, liiegal movement of secret groups of any races, and resistance of aborigines. From the begining, each state located on current Malaysian territory did not visibly have any laws or practices on security. They only had some rules or customs stipulated to protect security, control security and punish criminal who infringe security of their leader's union. These rules or customs were arisen from an intergration of religious principle, royal tradition and local belief.

The Malaysian Internal Security Act was commenced after an announcement of the Emergency Regulations Ordinance (ERO) aiming to settle the Malayan Communist Party's activities in arms against State power. Then, after the government was able to put an end of this activities and cancelled a state of emergency on 31 July 1960, on the next day, the Internal Security Act (ISA) was announced instead of the ERO as a tool for maintaining a national security. The purpose of this Act is to maintain security of Malaya (Malaysia), prevent invasion and any attempts to overthrow a State regime, suppress any attempts of any individuals or organizations to cause violences, losses of life or damages to property of Malaya's civilians.<sup>60</sup>

Outline of The National Security Act contains 4 parts, 85 articles<sup>61</sup> consisting of Part 1: Preliminary, Part 2: General Provisions Relating to Internal Security, Part 3: Special Provisions

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<sup>58</sup> Ibid, p. 74.

<sup>59</sup> Apichest Kanchanadit and Worachat Chareonpol, **The Political Movement of SUARAM for Anti-Internal Security Act in Malaysia (1989 – 2009)**, p. 32.

<sup>60</sup> The Commissioner of Law Revision, Law of Malaysia Act 82 Internal Security Act 1960 p.9.

<sup>61</sup> Apichest Kanchanadit and Worachat Chareonpol, **The Political Movement of SUARAM for Anti-Internal Security Act in Malaysia (1989 – 2009)**, p. 38.

Relating to Security Areas and Part 4: Miscellaneous Provisions which will be considered as follows:

First issue This Act provides an attempt to describe definition, empowerment in practice, responsibility and management of violation of human rights. The Act does not describe the definition explicitly. It only provides broad explanation of security threat that is “any actions threatening peace, security of properties, community at large and national unity”. This definition might be interpreted widely including any harms that the government think as a threat to themselves.

Second issue This Act authorises the officers (From the Minister of Ministry of Interior to general officers) to perform their duties on security most efficiently in order to be able to manage security of state or public in situation at risk. For instance, a provision gives the Minister of Ministry of Interior an authority to imprisonment or confinement no more than two years of person who was determined to be a security threat; a provision gives authority to announce an emergency area, announce a restricted place or area and announce to seize an area to the Minister of Ministry of Interior according to the provision (but in fact the Prime Minister also be able to utilise this authority as the supreme leader); and a provision gives the officers an authority to work with arms or violence legitimately.

Third issue On the topic of Responsibility according to this Act, the content provides non-responsibility on performing any duties under this Act ignoring any mistakes. If any troubles occur from performing the duties, the government will be responsible for damages of properties, but not responsible for people’s life or injuries. The activities for the reason of national security also be barred from any prosecutions.

Last issue On an aspect of human rights, several parts of the content of this Act tend to be in conflict with human rights principle, such as, arrest without permit and exclusion of the rights to bail. Moreover, there also are principles intending to diminishing freedom, for instance, any distributions of publications or news verified as a threat to security will be prevented till asking for permission and report.

Since 1970s, lots of problems around the world, especially the Vietnam War, economic depression and other worldwide problems had an effect on Malaysia. Noticably, the conflict between liberalism and communism in the Cold War triggered off movements of people, especially Chinese, on supporting the Communist Party. Hence, the Malaysian government used the Internal Security Act as one of effective mechanisms on solving several problems happened from political protest and management of information’s spreading about Communism.



Works of the Malaysian government under the Internal Security Act was an important governmental system in successful dealing with national security problems, because the government was able to maintain security and insecurity by create the State of Exception<sup>62</sup> for citizens to be able to understand the needs of the government on utilising this rule, then the government will be able to perform their duties appropriately. Nevertheless, this Act was discussed and criticized a lot as a law that is not commonly use in democratic country, and also was concerned on a topic of extreme operations in some States and topic of human rights infringement that frequently occurred.

#### 2.1.4 Project IC: Identity Card, 2001

Malaysian national ID card project can be seen as one of the policy related to the racial politics. The policy is deliberated by the Government granting the Malay citizenship to the refugee especially for Islamic immigrant who immigrated from the southern Philippines and Indonesia Borneo. This project was significantly effect to the political implications and the political security of Malays people, because, it enlarged the number of Malays citizen in certain areas and to became a majority of citizens who have the power to determine the political direction in those areas<sup>63</sup>.

The Project IC is a policy that the Malaysian government commenced since September 2001. This project, with roughly determined, can be seen as only a common project or policy of the government intending to provide identity cards to their people as a proof of identity of their citizens. However, this project which was a policy of the government leaded by Mahatir Mohamad, the Prime Minister, was criticized for not only being common project or policy of the government, but also indicating political problem and problem on infringement of people's security.

According to Malaysian law, people aged more than twelve years old are required to hold an identity card, but this card does not require any picture and fingerprint. However, when Malaysian people aged more than eighteen years old, they are required to change a identity card to be national identity card.<sup>64</sup>

A fundamental principle of the Project ID is a project providing citizens an identity card. This card is a smart card produced from plastic sheet containing card chip for keeping

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<sup>62</sup> Piyabuth Sangkanokkul, ‘“State of Exception” in Giorgio Agamben’s Opinion’ 8:1 **Samesky**, 2010, pp. 84-91.

<sup>63</sup> Meredith L. Weiss (editor), **Routledge Handbook of Contemporary Malaysia**, 2015, pp. 85-86.

<sup>64</sup> Mathews Thomas, Is Malaysia’s MYKAD the “One Card to Rule Them All”? The Urgent need to Develop a Proper Legal Framework for the Protection of Personal Information in Malaysia, *Melbourne University Law Review* Vol28, 2004, p. 477.

card holder's information. The information within this card consist of information about race, religion, fingerprint of card holder, polling station code, voting of card holder, criminal record, residence, driving summon and demerit point and health. From these information, this card can be used as identity card, driving license, health card, passport information, debit card (ATM), and cross border card between Singapore, Brunei and Thailand; and this card also has a system to facilitate the secure electronic transfer of information (Public Key Transfer).<sup>65</sup>

On January 2010, this project was made an adjustment. The number on the identity card was changed to twelve digits for citizens to use as id number when contacting with any state agencies, so each state agency did not need to provide a specific number for each citizen contacting them as the had done in the past. In other words, citizens were able to contact all state agencies with only a set of id number. Nowadays, this system was developed to be "MyKad" which is a card for confirming citizen's status of Malaysia.

There are two main reasons why this project was heavily criticized and bacame political issue, namely, this policy was a policy that infringed an information privacy, and this policy lead to a change of political bastion in Sabah.

First reason: Infringement of an information privacy<sup>66</sup>: An information privacy is a topic that raises international concern. The identity card under Malaysian policy was concerned that it might infringe the information privacy, because this card contained all personal information from all sources and it even allowed all State agencies and other individuals to retrieve these information. A vital political problem of this policy was an easiness of the government on retrieving personal information(Big Brother) due to the collection of these personal information. The government was able to monitor and investigate on any information of oppositions or protestors of the government. They also were able to secretly input any criminal records inside any persons' database without their notice.

Furthermore, there were other trivial problems that might occurred to the database of collection of personal information, for instance, error or incompetence of system, and theft by third parties. Due to all above-mentioned problems, The Project IC became a political project that was heavily criticized.

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<sup>65</sup> Ibid, p. 481.

<sup>66</sup> Yap Ai Kee, Yeoh Choo Nee, Leau Yu Beng, and Tan Soo Fun, Security Issues on Identity Card, *Malaysia International Journal of Engineering and Technology* 4: 5, October 2012, p. 619.

Second reason: Change of political bastion in some areas<sup>67</sup>: The Malaysian Project IC was criticized that it had connection with internal political affairs of Malaysia. It was seen as a project to help the Muslims immigrating from south of Philipphines and Borneo island in Indonesia into Sabah by granting them the Malaysian nationality. This action was criticized that the government wanted to increase the number of Muslim voters in electoral districts of Sabah resulting in the victories of representatives from government party in some districts.

### 2.1.5 Bureaucratic Reform Project, 2010

Bureaucratic reform is considered to be one of the policy affect to Malaysia politic. Bureaucratic reform project is included in Vision 2020. The policy does not reform any of administrative form but it intends to reform the Malaysian bureaucratic. By this policy aims to change the Government representation with more effective performance and include the standard of efficiency assessment so called National Key Result Areas as well as reduction of crime rate, improvement of public transportation in urban area, and improvement of the student education<sup>68</sup>.

The bureaucratic reform project is a policy under the government of Najib Rasak, the Prime Minister. This Program emphasizes on a reformation of government service system and an improvement of efficiency on public service of State agencies. This Program was simultaneously started with the Economic Transformation Program which is a program aiming to reform an economic structure of Malaysia to be more economic liberalism. The Economic Transformation Program intends to increase economic activity of private sectors with the government as a supporter, not a leader in management of an economic system.

The bureaucratic reform project is a policy aiming to improve and reform public works and services to be more modern, efficient, and able to meet the demand of civillians. From this Program, seven issues of the National Key Result Areas (NKRA) was spceified,<sup>69</sup> namely, (1) decreasing crime, (2) opposing corruption, (3) improving education result of students, (4) enhancing livelihood of low-income citizens, (5) increasing cost of living, (6) improving infrastructure of rural areas, and (7) improving transportation system of urban areas. State agencies being in charge of each goal will prepare the Key Performance Indicators (KPIs) and set up projects for achieving their goals. Then, Malaysian government will establish the Performance Management and Delivery Unit (PERMANDU) subordinating to

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<sup>67</sup> Edmund Terence Gomez, **Politics in Malaysia: The Malay dimension**, 2007, pp.85-86.

<sup>68</sup> Performance Management and Delivery Unit, Prime Minister Department, **Government Transformation Program: The Roadmap**, (Putrajaya: Prime Minister Department, 2010), p. 14.

<sup>69</sup> Ibid, pp. 26-169.

Office of the Prime Minister as a main institute in monitoring the operations of all relevant agencies under this bureaucratic reform project.

On the other hand, a research attempting to evaluate citizen's opinions and perceptions on the bureaucratic reform project found that<sup>70</sup> only nineteen percent of a sample group understood the concept of this bureaucratic reform project. The respondents thought that decreasing crime was the most successful measure. In addition, suggestions of most respondents did not directly relate to the Program itself, but they suggested the government to solve the problem on the immigrants coming into Malaysia.

## **2.2 International Agreements on Political and Security Agreed with other Countries or International Organization**

According to the international cooperation framework on political and security that Malaysia has agreed with other international bodies can be separated into two parts. The first part is that Malaysia has participated in the conventions as an agreement made by the United Nations. In the other part, because of the threats and the issues that arise in the region level that entailed Malaysia to consider the importance of the cooperation with neighboring countries.

Therefore, the content in this section will illustrate the part of international agreement between in the political and security that Malaysia agreed to other countries or international organization, as follows:

### **2.2.1 Convention on the Prevention and Punishment of the Crime of Genocide, 1948**

Convention on the Prevention and Punishment of the Crime of Genocide<sup>71</sup> is the convention that Malaysia agreed with United Nation on 20 December 1994<sup>72</sup>. The intention of this convention arose from the sequel of the Jewish genocide. Thus it is the fundamental of the collaboration to legislate the genocide as an international crime that must be condemned and liable as a criminal.

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<sup>70</sup> MohdFoadSakdan, Ahmad Martadha Mohamed, Abdul Halim Ahmad andMohdShukri Khalid, **Evaluation of Citizen's Perceptions on Government Transformation Program (GTP) in Malaysia**, Proceeding of Thailand's First International Conference on Public Management and Public Affairs: Challenges and Prospects in ASEAN and Beyond, Bangkok, Thailand, August 30-31, 2012, p. 290.

<sup>71</sup> United Nation, Convention on the Prevention and Punishment of the Crime of Genocide Treaty Series, 1948.

<sup>72</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-1&chapter=4&lang=e](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=e))

The convention laid down the clear principal for responsibility of any actions arising from the crime of genocide without any exception for any individual status. The convention laid down the key principle of human right protection and the mechanism to execute the offenders<sup>73</sup> such as the protection for groups of victims of the genocide crime, individual responsibility principal and universal jurisdiction

The Convention is considered as a General Law embracing the prohibition of genocide arising from the practice of States which is considered to be in the scope of the convention. Moreover, genocide crime is considered to be *Jus Cogens* bidding all the States including the States that are not the parties to the Convention<sup>74</sup>.

Malaysia considers this Convention as a remarkable key for the political society in Malaysia. Especially, the principal of this Convention has directly influent the Internal Security Act that was deliberated as a violation of the human rights and apparently to abuse of the racial group in Malaysia. This is because Internal Security Act can be interpreted that the State authority has excessive power which may cause the suppression of the Government is excessively vicious and possibility to became an accusation of the genocide

### 2.2.2 Convention on the Territorial Sea and the Contiguous Zone, 1958

Convention on the Territorial Sea and the Contiguous Zone<sup>75</sup> is the Convention that Malaysia agreed to collaborate on 21 December 1960<sup>76</sup>. The Convention concerned on the territorial sea and the contiguous zone was established on April 1958 As a result of the mutual consideration in the issue of the law of the sea that often arose from the conflict of territorial sea. And in this discussion also consider other three subjects which are Convention on the High Seas, Convention on Fishing and Conservation of the Living Resources of the High Seas, and Convention on the Continental Shelf together known as Geneva Conventions 1958<sup>77</sup>.

The essential of the Convention is to describe the scope of sovereignty in the maritime territory, defining the baselines, right of innocent passage, defining exclusive economic zone as well as defining the island territory. The Convention also defines the maritime contiguous zone in the High Sea territory by empowering the State Authority to act

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<sup>73</sup> Duangden Nakseeharach, Crime of Genocide and Thailand's Accession to the Convention on the Prevention and Punishment of the Crime of Genocide 1984, **Graduate Law Journal** 3:1, 2009, pp. 166-169.

<sup>74</sup> Ibid, p. 173.

<sup>75</sup> United Nation, Convention on the Territorial Sea and the Contiguous Zone, 1958.

<sup>76</sup> United Nation Treaty Collection (Available in [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-1&chapter=21&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-1&chapter=21&lang=en))

<sup>77</sup> United Nation Treaty Collection (Available in <http://legal.un.org/avl/ha/gclos/gclos.html>)

reasonability and delimit the States that has the contiguous territory to the other State to extend their territory.

Malaysia entered into this Convention on December 21 1960. Because Malaysia territory is consist of the coastal area and the Islands. Thus it is difficult to define and eliminate the problems of the territory area. Malaysia, therefore, consider the policy for maritime territory as a particularly important policy because Malaysia experienced with the marine security conflict with neighboring countries, such Indonesia, the Philippines as well as Thailand. Such a conflict arose between Sip Ata and Luigi Island and Indonesia or Sabah State and Malaysia etc. In addition, despite the problem of migration controlling and pirate, Malaysia enables to manage and be protected under international rules.

### **2.2.3 ASEAN Declaration, 1967**

Malaysia joined the Association of Nations of Southeast Asia under the foundation of the Bangkok Declaration or the ASEAN Declaration. The Declaration was initiated by the group of member countries which are Indonesia, Malaysia, Singapore, The Philippines and Thailand in August 8 , 1967 . The member counties perceive the importance of a joint-community in the ASEAN region and establish the cooperation in the region level.

The purpose of the declaration is the cooperation among parties in the aspect of economic, social and cultural giving rise to the establishment of the benefit of cooperation and development in the quality of life, commercial, education and other aspects for the people of members. This declaration outlines the major goals and objectives in 7 reasons as follows<sup>78</sup>:

1. to Develop the economic growth, social progress and cultural development giving rise from the cooperation and efforts to achieve a solid foundation that will lead to prosperity and peace in the Southeast Asia region.

2. to promote the achievement of stability, peace and security of Southeast Asia under the rule of law and justice giving rise to the relationship between countries in the region, including the adhering to the Charter of the United Nations.

3. to promote the cooperation and support in the economic, social, cultural, academic, scientific and management technical.

4. to promote the mutual assistance in order to facilitate the research in the academic, vocational and management aspect.

5. to provide the effective cooperation in order to maximize the benefit of the agriculture, industry, the trade progression, including a study on the problems regarding to

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<sup>78</sup> The ASEAN Declaration (Bangkok Declaration), 1967 (Available in <http://www.mfa.go.th/asean/contents/files/other-20130527-162937-870593.pdf>)

the international trade of goods, development of the transportation as to facilitate the communication, and develop the quality of individual's life.

6. to promote Southeast Asian studies

7. to strengthen the cooperation and coordination among organizations holding similar goals and objectives in both at the regional and international levels.

Malaysia has signed in the Declaration as the first five countries while Tun Abdul Rasak Hussain was holding the Deputy Prime Minister, Minister of Foreign Affairs and Minister of national development. The cooperation to establish the Declaration is influenced from the problem concerning on the threat of Communist ideology which being widespread in the ASEAN region. Malaysia at that time was anxious to the threat of communist doctrine that widespread among the group of Malaysian Chinese affected political security in Malaysia. Because of the existence of racial conflicts and the additional feature supporting from Communist doctrine would make Malaysia seek the cooperation in this issue as well.

On the other hand, under the Declaration Malaysia still faced many problems from the previous conflicts that continue to affect the activities under regional cooperation, such as, the conflict with the Singapore, the conflict with Indonesia, the conflict with the Philippines causing the obstacle to policies according to the ASEAN Declaration.

#### **2.2.4 ASEAN Convention on Counter Terrorism, 2007**

In addition Malaysia is also aware of the harm caused by international terrorism. In order to prevent the problems that are threatening the stability and security Malaysia agreed to sign in the Counter Terrorism ASEAN Convention on Counter Terrorism<sup>79</sup>, which will help to achieve cooperation in countering terrorist threats that will arise in the region.

The ASEAN Convention on counter terrorism is a regional agreement that Malaysia takes action under the ASEAN cooperation in order to prevent and eliminate threats from terrorism. Malaysia was the tenth countries that signed in this Convention on January 11<sup>th</sup> 2013<sup>80</sup>. The Convention was a result of the broaden issues of widespread terrorism and it emerged the anxieties among Southeast Asia counties. According to this concern during 12<sup>th</sup> ASEAN Leaders Summit (in January 2007), Cebu Philippines, ASEAN leaders have signed up to the ASEAN Convention on Counter Terrorism: ACCT as to create the cooperation between the member counties in anti the terrorism that being widespread in the region. This cooperation is a framework at the level of Ministers and senior officials consisting of cooperation such as supporting the justice in terrorism crimes, exchanging intelligence information, suspension the financial related to terrorism activity, mutual investigations and

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<sup>79</sup> The Association of Southeast Asian Nations, ASEAN Convention on Counter Terrorism, 2007.

<sup>80</sup> ASEAN Secretary News (Available in <http://www.asean.org/news/asean-secretariat-news/item/asean-convention-on-counter-terrorism-completes-ratification-process>)

issue of amnesty to suspects of terrorism crimes. Malaysia, at that time, was in the process of signing then Malaysia considered signing in as the last country after the Convention had already effected.

The importance guidelines of the Convention aimed at promoting the elimination of terrorist problem at the origin of the problem by focus on the importance of the peace and respect of the diversity of culture, religion, and society. By this Convention, it established the framework for the cooperation between Member countries in 13 aspects as follows:

1. follow the steps that are necessary to suppress the action of terrorist groups including the exchange of information on terrorist alert
2. eliminate the financial support, any support, or any action of a terrorist group that uses the territory of the Member countries to perform terrorist activity in countries of the Member
3. prevent and deter financial support of terrorist groups
4. control of terrorist groups through immigration and preventing the fraudulent document
5. promote the development of the capability of the cooperation by training and meetings between agencies
6. support the public relations as to establish the cooperation in the cooperation to fight against terrorism, and strengthen the fellowship among different cultures
7. strengthen cross-border cooperation
8. strengthen the procedural of exchanging news and information mutually
9. mutually develop a database for utilizing in the ASEAN region under the supervision of the ASEAN
10. develop capabilities in the anti of the terrorism, chemical weapons, biological weapons, nuclear weapons, radiation weapons, the Internet and the other novel terrorism
11. mutually research and develop of academic knowledge in order to combat terrorism
12. support and develop the communication systems and communication technology
13. promote the confidence in arrested procedural of suspects involved in the terrorist activities being brought into the justice system.

There is worthy of note that Malaysia has signed and ratified the Convention as the last country in 2013. Due to the major requirements of Convention, that possibility to contrary to legality of the Internal Security Act and it distress the interpretation of the



individual or the terrorist group, including the interpretation of the scope of Malaysia's internal security. Therefore, characteristics of terrorist in the Malaysia's point of view, in some aspect, related to politics. Moreover, in aspect that the terrorist crimes are often defined in a direction that the terrorist caused by Muslims. The Islamic State such a Malaysia possibility anxious when the country has to bind to this Convention. Furthermore, because of Malaysia's Internal Security Act empower the law enforcement in controlling of internal security to the Government which is excessive the power under the ASEAN Convention on Counter Terrorism. If the Government of Malaysia accelerated to ratify the Convention, it could affect Malaysia's security policy under the context of the conflicts within the country. These may be the reason that Malaysia merely signed in but did not ratify the Convention at the first place.

## Chapter 3

### Law on Society, Culture, Politics and Security

#### 3.1 Education Law

A comprehensive overview of the structure and foundation of the education system has been one of the most challenging approaches to reform and develop Malaysia. Thus, Malaysian government is focusing and emphasizing on the formation of their education. Malaysia is made up of mixed and diverse population, for example population groups, culture, economy, society and physical territories. At the beginning, the fundamental structures and policies regarding education and laws in Malaysia, from the British Colonial government until now, have been regarded as the methods in every government to direct and rule the country in aspect of development with different approaches and strategies.

##### 3.1.1 Introduction

The national education system in Malaysia is classified as being in the high standard level and is influenced by the British educational model. English is the main language using in a number of institutions and Twinning Program, which is the collaborated educational program with foreign institutions such as USA, UK, Australia, New Zealand, Canada, and Switzerland, has gained attention from students joining this type of program.

The national education system in Malaysia currently has been adopted the Centralized system to be managed and mentored by Federal Government in order to strive and standardize the effectiveness of education system and management. As the matter of the fact, all of the curriculum and co-curricular activities, teacher training, infrastructure, teaching and learning materials and an effective management system shall be governed and supervised by Ministry of Education.

In the light of the National Educational Policy is formulated by Education Planning Committee (EPC), who is the essential organization working on rendering educational policies and is comprised of Minister of Education Malaysia as a chairman of the Committee. The Committee works on rendering educational policies, strategies and accomplishing those plans. There are a number of individual sections working on their duties regarding education. For instance, Central Curriculum Committee (CCC) who is responsible for the determination of the national curriculum, whereas in the State level, there is the State Education Office (SEO) which has State Education Committee, while the District Education Office (DEO) is responsible for the cooperation between schools<sup>81</sup> and State Education Office concerning financial fund supported by Federal Government.

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<sup>81</sup> Indo-China Education Center College administration, Burapha University, Malaysia basics.

The administration of education system in Malaysia is divided in to 5 stages as follows: 1) National stage, 2) State stage, 3) District stage, 4) School Group stage, and 5) School stage. All of the said stages are in the responsibility of Ministry of Education except for the education as Non-formal Education nature, shall be in authority of any other ministry such as Ministry of Labor, Ministry of Agriculture.

#### 1) The Administration of National Education

The Administration of National Education shall be in the scope of responsibility and power of Ministry of Education in regard to adopted policies, teaching and learning curriculum with the strategies given to manage and improve the quality and efficiency of the country's education plan.

#### 2) The Administration of State Education

The Administration of State Education shall be governed by relevant specific offices under special administrative region<sup>82</sup> of Malaysia categorized as follows:

a. The State Educational Office is under the supervision of Ministry of Education in charge of ruling and overseeing National Education in each state governed by Federal Government.

b. The State Government Office in each state is responsible for management and organization of educational aspect in schooling institutions established under and financially funded by each State Governments and non-formal education. The curriculum, examination and also standard test shall be assessed under the same manners given by Ministry of Education as same as any other educational institutions of Federal Government.

#### 3) The Administration of District Education

The Administration of District Education is under the power of District Educational Office. The educational institutions under this stage shall be established and located in each district and governed directly by State Government.

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<sup>82</sup> "The states of Sabah and Sarawak occupy a special position in the Federation compared to other states. This is provided for in the Constitution. These 2 states may make laws on matters which are not found in the State List for other states." Quoted in Syahredzan Johan, "Understanding the Federation of Malaysia," The Star Online, <http://www.thestar.com.my/opinion/online-exclusive/a-humblesubmission/2015/11/02/understanding-federation-malaysia/>, accessed 16<sup>th</sup> February 2017.

#### 4) The Administration of Schooling Group Education

The Administration of Schooling Group Education is in the nature of cooperation and academic partnership between the institutional members in schooling groups with aims to improving and developing the comprehensive education in the country. The institutions shall be grouped as primary level and secondary level which governed by Federal Government located in the same region (could be located in different districts but have to be in the same region). In addition to the grouping, 15-20 schools shall form 1 schooling group under the supervision of Resource Center, with mission to cooperating and managing activities amongst organizations.

#### 5) The Administration of School Education

The Administration of School or Institution Education is the internal management in each school or institution, for example university, college, school or any educational institution whatever named. The administrative board and directors of each institution shall be in charge including parents. In regard to the operation and management of education, financial budget and fund allocation shall be then approved and the requirements shall also meet the standards set forth by Ministry of Education.

In regards to the language used in educational systems as Educational Method of Communication,<sup>83</sup> Bahasa Malaysia is the main language, as in classes or communication, in the majority of educational institutions under section 152 of Federal Constitution of Malaysia. To what extent, section 152 states that the national language is Malay language.<sup>84</sup> However, there is an exemption for those of government education institutions or government aided-educational institutions, referred as “national-type-schools,” where Chinese, Tamil or English languages are adopted.

### **(1) Educational Stages in Malaysia**

In the past, Malaysia divided the stages of Education into 4 systems which are 1) Primary Education 2) Lower Secondary Education 3) Upper Secondary Education 4) Post-Secondary or Pre-university Education. The past Education systems were governed by The National Education Act 1961 until year 1996, the government enacted new legislation named The Education Act 1996 (“Act 550”). Act 550 has given more details regarding Pre-School Education and incorporated it into one of the national education systems. Thus, at present, Malaysian Education types into 5 systems.

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<sup>83</sup> The Education Act 1996, section 17

<sup>84</sup> The Federal Constitution of Malaysia, section 152

The Education Act 1996 or Act 550<sup>85</sup>, the National Education Systems shall comprise of

### 1. Pre-school education

Pre-school education is kindergarten, which is suitable for the children whose age is range from 4-6 years old<sup>86</sup>. There is no educational mandatory rules required every students to take part in this stage of education. On the contrary, enrollment in primary school is mandatory level. Most pre-school institutions are private schools located in high density city or urban area nearby where the parents are capable of earning high income and being more financial potentiality with good intention to support and advance their kids' skills.

As stated above that pre-school education is not required by any education law of Malaysia as a mandatory educational level, government has regulated the essential relevant rules and regulations in relation to establishment, administration and operation of pre-schools which are obliged to complete the registration to be pre-school institutions under the Education Act 1996.<sup>87</sup>

All of the National Pre-school Curriculum shall be generally adopted in every educational institutions and schools. The registered institutions shall prescribe the said curriculum and are allowed to implementing or adding additional curriculum by inform the Registrar General of such intention as may be prescribed. A person who contravenes shall then be charged as guilty of an offence and obliged to pay the amount of fine not exceeding 10,000 ringgit or imprison for duration not exceeding 1 year or both penalty.<sup>88</sup>

### 2. Primary Education<sup>89</sup>

Primary education in Malaysia is a first stage of a mandatory educational stage that the children is necessitated by law to participate in at the age of 6 years old. A national school, national-type school or private school established under this Act shall provide a course of primary education design for a duration of six years, which is referred to as Year 1 (Tahun 1) until Year 6 (Tahun 6), but which may be completed within five to seven years.

The Minister may, by order published in the Gazette, arranged and approved primary education to be free-of-charge and compulsory education for children at the age of 6 years old. A parent who infringes shall be guilty of an offence and shall, on conviction, be liable

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<sup>85</sup> The Education Act 1996, section 15

<sup>86</sup> The Education Act 1996, section 2

<sup>87</sup> The Education Act 1996, Chapter 2 section 20

<sup>88</sup> *ibid*, section 22

<sup>89</sup> *ibid*, Chapter 3

to a fine not exceeding 5,000 ringgit or to imprisonment for a term not exceeding 6 months or to both punishments.<sup>90</sup>

The academic years of study shall be apportioned into 2 semesters, which are composed of semester 1 starting from January to May, and semester 2 starting from June to November.

Concerning the Curriculum for Primary Education, Since 1983, the new vital and fundamental curriculum, exploited in primary education in 1988, is called The New Primary School Curriculum (or known as NPSC), which includes and emphasizes on 3 basic skills, i.e. reading, writing and mathematics collectively called 3Rs.

The promotion will be automatically executed from Year 1 to Year 6, regardless of academic performance. After graduated the Year 6, the test called Primary School Achievement Test (or Ujian Pencapaian Sekolah Rendah: UPSR) will be mandatorily taken with the requirement that all students pass six subjects: Malay comprehension, Malay writing, English comprehension, English writing, Mathematics and Science. For students studying in other Natioanl-type School, they are required to take the Mandarin reading comprehension and writing or Tamil with 2 more subjects. At the end of primary school, students who graduate from a national elementary school will be eligible for immediate high school. However, for students who graduate from other ethnic elementary schools, they will be required to attend the Transition class for a period of one year before attending secondary school. Except for students with UPSR results of Grade C in the Malay language will be eligible to enter high school immediately.

### 3. Secondary Education

The Secondary education in Malaysia, which is a continuing stage of study after completing primary school, take a period of 5 years of whole academic study starting from Form 1 (Tingkatan) to Form 5 (Tingkatan 5).

#### a. Curriculum for Secondary Education

Curriculum designed for secondary education is referred to as The Integrated Curriculum for Secondary Schools (ICSS). The ICSS provides teaching of Bahasa Malaysia, English, Tamil, Chinese and any other languages whatever practical called Kirikulum Bersepadu Selkolah Menengah (KBSM).

#### b. Level of Secondary Education

Secondary education in Malaysia is divided into 2 stages as follows:

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<sup>90</sup> The Education Act 1996, section 29A

### (1) Lower-Secondary (Form 1-3)

Lower-secondary last for a duration of 3 years, since Form 1 to Form 3, and each school will use the same curriculum in which the principal courses are consisted of Malays, English, mathematics, arts, sciences, history, geography, and Islamic or ethical study. At the end of Form 3, the students are required to take the Lower Secondary Assessment (LSA) or Pentaksiran Tingkatan 3. Subsequently, the result of the test will be the subject matter considered in order to place the student into their chosen courses in high school level.<sup>91</sup>

### (2) Upper-Secondary Education (Form 4-5)

At the end of Form 3, Lower Secondary Assessment is taken by students to graduate from Form 3 of lower-secondary education. Based on the evolution results, students could have several options to further their study in upper level which are<sup>92</sup> (1) Academic School (2) Technical and Vocational School and (3) Religious School. Besides, The Education Act 1996 empowers the Minister to provide secondary schools of such other descriptions as the Minister may from time to time determine and provide upper secondary education in any national secondary school.<sup>93</sup> The result of the Lower-Secondary Assessment (LSA) will impact the eligibility of Students in entering upper-elementary school.

The upper-secondary education system is based on the Open certification concept. Students are required to take 6 common core subjects: Malay, English, Mathematics, History, Physics, and Chemistry. Moreover, electives are to be chosen depending on the student's interests and abilities. When all students graduate from the Form 5, they must take the Malaysian Certificate of Education or Sijil Pelajaran Malaysia (SPM).<sup>94</sup> Since 2010, students have been allowed to take no more than 10 examinations.

In private institutions and university in many countries including Thailand, the students who pass the SPM shall be eligible to further and register their study in university or take a year Foundation Programme. On the contrary, in Malaysia, every student who wishes to enter into state university are required to enroll post-secondary or pre-university education before entering into university level.

Whereas the students from the Chinese secondary school who wish to further their study in Mandarin are able to attend Chinese language private schools for a maximum of 6

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<sup>91</sup> The Royal Thai Embassy in Kuala Lumpur, <http://www.thaiembassy.org/kualalumpur/contents/files/thai-people-20141119-111524-186626.pdf>, accessed 16<sup>th</sup> February 2017.

<sup>92</sup> Wikipedia, Education in Malaysia, [https://en.wikipedia.org/wiki/Education\\_in\\_Malaysia#Secondary\\_education](https://en.wikipedia.org/wiki/Education_in_Malaysia#Secondary_education), accessed 16<sup>th</sup> February 2017.

<sup>93</sup> The Education Act 1996, section 30

<sup>94</sup> The SPM exam is based on the old-school School Certificate, which was developed into the General Certificate of Education 'O' Level Examination, and was later developed as the General Certificate of Secondary Education: GCSE

years. In each year, the students must pass the examination and, after the graduation, the UEC-SML Unified Examination Certificate of Senior Middle Level (UEC-SML) is required. However, the curriculum is not considered part of the national education system but it can be used to apply for admission to many private universities or universities abroad especially in the countries that use Chinese as main language. In the latter periods, private Chinese language schools began to offer Malaysian language courses for students wishing to enter universities in Malaysia. These students are eligible to take both SPM and UEC.<sup>95</sup>

#### 4. Post – Secondary or Pre – University Education

After completing secondary education, students could then choose to enter into job market or further their academic life by entering into post-secondary or pre-university education to be granted higher certificates and be able to admit to university. For the admission to post-secondary or pre-university education, it will be determined basing on the programme selected by the student since being in the Upper Secondary Education and the SPM examination must be passed.

Post-secondary or pre-university education is divided into 2 courses as follows: (1) Form 6 curriculum and (2) Matriculation curriculum. Each course is detailed as follows:

A. Form 6 or Sijil Tinggi Persekolahn Malaysia (STPM)<sup>96</sup> is a preparatory curriculum in selected secondary schools. The duration of the course is 1 year and a half. Students who are eligible to enroll in the Form 6 program are required to pass the SPM examination in the designated subjects which are Malay and three other subjects. The age of applicants must be between 17-20 years old.

Courses offered in the Form 6 program are available in 23 subjects. Students can choose in maximum up to five subjects only, including Mandatory Pengajian and MUET which will be the qualification for the university entrance. Those who complete the Form 6 program can continue their studies in local public and private universities. In addition, they can also further their study in foreign universities.

B. Matriculation Program is an institutionalized curriculum specially developed by universities in a manner similar to the fundamental course to prepare students who wish to study in higher education with the duration of one or two years. All the courses, trainings and examinations will be under the supervision of the Ministry of Education. Matriculation Program, started in 2005, has the procedures for student selection by determining student quota basing on their origins. The quota of native students is proportionated 90% of all students while 10% of them are non-native people.

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<sup>95</sup> Ho Wah Foon, Value of UEC beyond recognition, in Press Reader, <http://www.pressreader.com/malaysia/the-star-malaysia/20151115/281732678378511>, accessed 16<sup>th</sup> February 2017.

<sup>96</sup> The STPM is equivalent to the General Certificate of Education 'A' Level Examination of England.



For the Matriculation, the courses are divided into the following:

(1) One year programme in science (PST) is divided into two semesters, allowing high school students in science, technology and accounting to enroll in this course.

(2) Two year programme in science (PDT) is divided into four semesters. Only high school students in science are allowed to attend this course. The study is based on the curriculum of the one-year programme but with the extended learning period of two years. In addition, this programme is reserved for native students only.

(3) Accounting programme is a one-year course of 2 semesters containing 4 subjects: mathematics, accounting, business administration and economics.

(4) Technical programme is a one-year course of 4 semesters, which is open to upper secondary students in the technical field or high school graduates with basic knowledge and skills in engineering technology. The course consists of 4 subjects: mathematics, engineering chemistry, engineering physics and engineering education.

Student achievement measurements are set at each semester. In addition, when graduating, there will be an examination called Matrikulasi (or matriculation) which the result can be used to apply to specific universities in order to meet the objectives and needs of such universities. Students who wish to enter university must pass the entrance examination of such university and get the certificate of qualification (Matriculation Certificate)

Additionally, for the pre-university education, there are also private schools with Chinese language instruction. The education system of such schools will be different from government schools in terms of the duration of study which is required to be 6 years. In each year, there will be a final examination that all students are required to pass to get promoted. At the end of the study, students will be required to take a standardized examination of private schools with Chinese language instruction called the Unified Examination Certificate (UEC). The exam will be administered by the Teacher Association and the Board of schools with Chinese language instruction. However, the education system of such private schools is not recognized as the central education system of Malaysia. Thus, most of the graduated students rather choose to further their university education abroad or getting into a private university in the country.

## 5. Tertiary Education

The education in tertiary or higher level aims in improving high qualified and competent the graduates to supply human resource to fulfill the need of the workforce from various sectors and occupational fields. The new graduates are expected to be of high moral values, competitive, highly knowledgeable and skillful in order to meet the country's need. The aim of tertiary education is to develop students' analytical, creative and innovative thinking to enable them to contribute towards the nation's progress and ready to compete in the international arena.

After graduation of Form Six or matriculation programme, students could elect to continue in tertiary education where offer a variety of curriculum to be chosen, such as diploma/certificate, Bachelor's degree, Master's degree or Ph.D. degree. In general, the curriculum lasts from 2 to 4 years, except certain programme incorporating sophisticated education and practical exercise together that could takes longer time. For example, medical and health profession that has in and off-campus course which takes 5 to 6 years of study.

In tertiary institution operated and administered by government, the instruction shall be conducted in English or both English and Bahasa Malayu. To what extent, English is a main language in certain course, such as science, mathematics, computer and technology. In private tertiary institutions, English will be respected as main language in instruction and communication, whereas, in University Kebangsaan Malasia (UKM) or National University of Malaysia, the courses but foreign language shall be conducted in Bahasa Malayu.

The administration of tertiary education is being placed under the purview of Department of Higher Education, which is established in the Ministry of Education (MOE). Prior to the restructuring of the Cabinet in 2004, Ministry of Higher Education was set up with the purpose of overseeing the area of higher education in Malaysia.

In efforts to reinforce the quality in higher education, the Malaysian Qualifications Framework (MQF) was introduced at the end of 2007. The main feature of MQF is to promote student mobility from one education programme to another through the transfer and standardization of course credit. The implementation of MQF will simplify course certification at the international level. The authority responsible for MQF is called the Malaysian Qualifications Agency (MQA), who oversees and monitors the standards and quality and assessment of education system. Accreditation Status is a method espoused as a credit system to provide uniformity and to aid in comparison of educational qualifications within Malaysia. MQA shall award the accreditation status in accordance to the standard and criteria. Malaysian Qualifications Agency Accreditation is divided into 8 level, which will be started from MQF 3 credits involving in tertiary education described as below:

- a) Certificate level in MQF 4
- b) Diploma level in MQF 5
- c) Advanced Diploma in MQF 5
- d) Bachelor's degree in MQF 6
- e) Postgraduate Certificate/ Diploma or Master's degree in MQF 7
- f) Ph.D. degree or Doctoral degree in MQF 8

## (2) Categories of education institutions

There shall be 3 categories of education institutions in the National Education System,<sup>97</sup> namely

### 1. Government Education Institution

Under section 2 of Education Act 1996<sup>98</sup>, the meaning of “government school” or “government educational institution” means a school or an educational institution established and fully maintained and administered by the Minister under National Education System.

### 2. Government-aided Educational Institution

Government-aided Education institution has been given the interpretation in section 2 of Education Act 1996<sup>99</sup>. The definition of “government-aided institution” or “government-aided educational institution” means a school or an educational institution in receipt of capital grant and full grant-in-aid from public fund. The said capital grant or public fund shall be then paid in purpose of purchasing or renovating old infrastructure and facilities needed (e.g. buildings, roads, power supplies, materials, equipments). Furthermore, there is another sum of monies supported from public fund which is a financial resource for educational support called grant-in-aid.

### 3. Private Education Institution

This type of educational institution is given the meaning under section 2 of Education Act 1996 also. “Private education” means a school or an educational institution which is not a government or government-aided school or educational institution.<sup>100</sup>

However, in regard to the types of education system, institutions can be presented as follows:

#### 1. School Type of Primary Education

Primary educational institutions could be considered into 2 main types, which are as follows:

##### a. National Primary School

This category of primary school could be well known as Sekolah Kebangsaan (SK) and the Malay language is the medium of interaction for this type of school whilst English language is a compulsory language.

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<sup>97</sup> *ibid*, section 16

<sup>98</sup> The Education Act 1996, section 2

<sup>99</sup> *ibid*, section 2

<sup>100</sup> *ibid*, section 2

### b. National-type School

The non-Malay-medium National-type school could be recognized in another name as Vernacular School or Sekolah Jenis Kebangsaan (SJK) and use other languages in interactive method. At present, there are National-type primary schools that use Mandarin and Tamil as the medium of instruction that shall respectively be named SJK (C) and SJK (T). In addition, National-type schools use Mandarin or Tamil as the medium of instruction with the Malay and English languages made compulsory subjects.

Malaysian government rules that every educational institution must have the policy of teaching English and Malay, whereas the SK School has to teach and instruct Mandarin or Tamil upon request of at least 15 students.

Nevertheless, under section 29A (3) of The Education Act 1996, the Minister may, if he consider it desirable and in the interest of the pupils or the public to do so, by order publishing in the Gazette, exempt any pupils or any class of pupils from the requirement to attend compulsory education.<sup>101</sup> In addition, educational institutions have to change their title within the enforcement date of the Act; namely, (a) national primary schools shall be known as national schools and (b) national-type primary schools shall be known as national type.<sup>102</sup>

## 2. Types of Secondary Educational Institutions

The secondary educational institutions could be considered into 5 different forms as follows:

- a) National secondary school (regular)
- b) Secondary school (fully residential)
- c) Technical/vocational secondary school
- d) National religious secondary school
- e) National religious assisted secondary school

National Secondary Schools (or mentioned as Sekolah Menengah Kebangsaan: SMK) is a majority type of secondary schools operating in Malaysia. Whereas, other type of secondary school shall render some specialized character of education such as religious education mentioned as Religious Secondary Schools (Sekolah Menengah Agama: SMA) or science study referred to as Sekolah Menengah Sains (SM Sains). However, all of the secondary schools are obligatory to implement the standard curriculum for secondary education composed by the Ministry of Education.

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<sup>101</sup> The Education Act 1996, section 29A (3)

<sup>102</sup> The Education Act 1996, section 146

### 3. Types of institutions for Post – Secondary or Pre – University Education

There is a limit positions and opportunities for student to be chosen into university, students who are awarded SPM only will be eligible to take part in university. Thus, the type of the institutions is according to the curriculum for post-secondary or pre-university education. After upper-secondary education, students would have choice to further their post-secondary education by getting into institutions for (1) Form Six or (2) Matriculation (pre-university), a well-designed programme to prepare students for enter into top-ranked universities. The types of these institutions shall be given as follows:

#### a. Institutions for Form Six

Institutions for Form Six are divided into 3 Modes as follows:<sup>103</sup>

MODE 1: Schools with at least 12 classes of Form Six students only and the students are taught specifically by Form Six teachers who are appointed by MOE.

MODE 2: Schools with at least 12 classes of Form Six operating as part of the mainstream schools having their own block of classes or buildings. The MODE 2 institutions are under the administration of the mainstream Principal and the Form Six Administrative Assistant.

MODE 3: Schools with less than 12 classes or are located in the rural area, with no hostel facilities or public transportation and operate within the mainstream schools.

#### b. Institutions for Matriculation

There are currently 19 matriculation colleges/universities in Malaysia. They can be divided into 4 types as below:<sup>104</sup>

Type 1: Matriculation Colleges which include

- Kolej Matrikulasi Perlis
- Kolej Matrikulasi Kedah
- Kolej Matrikulasi Pulau Pinang
- Kolej Matrikulasi Perak
- Kolej Matrikulasi Selangor
- Kolej Matrikulasi Negeri Sembilan
- Kolej Matrikulasi Melaka
- Kolej Matrikulasi Johor
- Kolej Matrikulasi Kelantan
- Kolej Matrikulasi Pahang
- Kolej Matrikulasi Labuan

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<sup>103</sup> Ministry of Education Malaysia, Form Six, available at <http://www.moe.gov.my/index.php/en/tingkatan-enam>, accessed 9 July 2017.

<sup>104</sup> Edu Advisor, Everything You Need To Know About Matrikulasi in Malaysia, available at <https://eduadvisor.my/matrikulasi/>, accessed 9 July 2017.

- Kolej Matrikulasi Sarawak

Type 2: MARA Colleges which include

- Kolej MARA Kuala Nerang
- Kolej MARA Kulim

Type 3: Technical Matriculation Colleges which include

- Kolej Matrikulasi Teknikal Kedah
- Kolej Matrikulasi Teknikal Pahang
- Kolej Matrikulasi Teknikal Johor

Type 4: Universities which include

- Universiti Teknologi MARA (UiTM)
- Universiti Malaya

#### 4. Types of Institutions for Tertiary Education

The academic curriculums outlined for tertiary education are diverse and most of the institutions are financially supported and funded by government for administration and organization. When categorizing the institution by receiving financial and advantageous sustenance by government, the institutions shall be classified as follows:

##### (1) Public Institutions of Higher Education – PIHE

The higher education system is designed to ensure that the Public Institutions of Higher Education (PIHE) will have the capacity to develop a reputation which encompasses dynamism, competitiveness, ability to anticipate further challenges including acting effectively and keeping pace with globalization. Continuous efforts to enhance PIHE's ability to carry out their functions and responsibilities in a transparent and effective manner will be conducted in order to create higher education system. In this context, the PIHE are as follows:

##### 1) Universities which can be organized into 3 main categories are

a. Researched University focusing on research. This category comes with increased autonomy and funding to undertake research collaboration with industry and foreign universities, such as follows:

- Universiti Malaya (UM)
- Universiti Sains Malaysia (USM)
- Universiti Kebangsaan Malaysia (UKM)
- Universiti Putra Malaysia (UPM)
- Universiti Teknologi Malaysia (UTM)

b. Focused University focusing on the technical, education, management and defense disciplines. This category will focus on the subjects underlying the establishment of that university. The list of these focused universities is as follows:

- i. Universiti Teknologi MARA (UiTM)
- ii. Universiti Islam Antarabangsa Malaysia (UIA)
- iii. Universiti Malaysia Sarawak (UNIMAS)
- iv. Universiti Malaysia Sabah (UMS)

c. Comprehensive University offering various courses and fields of studies and emphasizing on giving programmes that render hands-on experiences. The list of these comprehensive universities is as follows:

- i. Universiti Utara Malaysia (UUM)
- ii. Universiti Pendidikan Sultan Idris (UPSI)
- iii. Universiti Tun Hussein Onn Malaysia (UTHM)
- iv. Universiti teknikal Malaysia Melaka (UTeM)
- v. Universiti Malaysia Perlis (UniMAP)
- vi. Universiti Malaysia Terengganu (UMT)
- vii. Universiti Malaysia Pahang (UMP)
- viii. Universiti Sains Islam Malaysia (USIM)
- ix. Universiti Sultan Zainal Abidin (UniAZA)
- x. Universiti Malaysia Kelantan (UMK)
- xi. Universiti Pertahanan Nasional Malaysia (UPNM)

By recent survey, there are 20 public universities operating in Malaysia comprising 5 research universities, 4 comprehensive universities and 11 focused universities.

The competent authority who oversees and monitor all of the universities is Department of Higher Education (DHE) which will be referred subsequently.

## 2) Community Colleges

Community colleges are instrumental in the development of human capital of local communities through the provision of knowledge and skills, including the inculcation of positive values and ethics via education and training programmes. The objectives of community colleges are to improve and expand skill training access and higher education path and to provide progressive training programme to improve the level of local communities. Students who wish to continue their studies and get entry in colleges must pass SPM or equivalent, will be granted certificate or diploma degree when graduation. Diploma or certificate programme takes at least 2 to 3 years to finish.

After completing diploma or certificate degree, students will be eligible to enter into advanced diploma or Bachelor's degree. In certain circumstances, students may be facilitated and exempted up to 30% or 1 year of the total credit in Bachelor's degree.

Colleges that are funded and supported by government are Institut Teknologi Majlis Amanah Rakyat (MARA or known as The Council of Trust for the Indigenous People) and Kolej Tunku Abdul Rahman (KTAR) where focus on training and course work to improve

students' skill. The entrance requirement is the Sijil Pelajaran Malaysia or the Sijil Pelajaran Malaysia Vokasional (SPMV or known as Senior Vocational Education).

The competent authority who oversees and administers the Community Colleges is the Department of Community College Education (DCCE) which will be referred subsequently.

### 3) Polytechnics

Since 2009, polytechnics are supervised by the Ministry of Education and lead to the award of Certificate or advanced Diploma. The aim of establishing is to build capacity for developing new technical skills in the country's human resources to answer the requirement in job market, enhance the potential ability of students and enhance good educational opportunities for students.

The competent authority who oversees and administers the Polytechnics is the Department of Polytechnics Education (DPE) which will be referred subsequently.

## (2) Private Institutions of Higher Education – PVIHE

The development of private higher education in Malaysia started in the 1950s as alternative educational institutions to cater students who did not succeed to secure place in public higher institutions, especially at diploma level, and it have received recognition from overseas universities as an entrance qualification in the universities' final year programme through credit transfer. Government of Malaysia has enacted another educational regulations to oversee and monitor higher educational practices. The Private Higher Educational Institutions Act 1996 (Act 555). This Act is provided for the establishment, registration, management and supervision of, and the control of the quality of education provided by private higher educational institutions and for matters connected therewith.

At present, established private higher education institutions are recognized for their universal educational quality standards. Furthermore, there are students from foreign countries aiming to study in such institutions. The implementation of The Private Higher Educational Institutions Act 1996 (Act 555) has made a significant step showing that trust and recognition are brought to education in Malaysia. There are 21 private universities divided into 5 researched universities, 11 focused universities and 5 comprehensive universities.

Private higher educational institutions could be recognized into 4 categories detailed as below:

A. The establishment of colleges or universities programme in order to expand and broaden opportunities for students to access to higher educational section has been brought twinning programme by coordinating with foreign universities. Twinning programmes in business, engineering, communication and information technology have been established between the local private higher institutions with universities abroad such as United



Kingdom (UK), United States of America (USA), Australia, New Zealand and France. There are also some private institutions which have forged collaborative efforts with some local universities in carrying out programmes at diploma and degree level. Furthermore, students can decide to take part of the course in Malaysia and another part in different countries or join full twinning programme that all of the course will be held in Malaysia but will be awarded co-certificate from foreign universities. For example, SEGi University College has offered the twinning programme with Abertay Dundee University.

B. Universities with financial support by large-sized companies are for instance Petronas Company, oil and gas manufacturer, Telecom or Tenaga Nasional. These companies are governmental enterprises owned and controlled by the Ministry of Finance. The company-supported universities are in the same administration and organization as any other higher education institutions.

C. Universities with financial support by political parties, for instance The Malaysian Chinese Association – MCA has granted sum of fund to Tunku Abdul Rahman – UTAR, The Malaysian Indian Congress – MIC has given away financial fund to TAFE College and Asian Institute of Medical Science.

D. Offshore campus is another choice in educational private sector established and certified by foreign universities. The instruction, courses, credit status including assessment shall be the same where the originated university is located to maintain the standards and qualifications. Students could choose this type of institution with great advantages, especially costs. The list of offshore campus are provided below:

- i. Monash University Malaysia campus
- ii. Curtin University of Technology Sarawak campus
- iii. Swinburne University of Technology Sarawak campus
- iv. University of Nottingham Malaysia campus
- v. University of Reading Malaysia
- vi. Heriot-Watt University Malaysia

Competent authority who oversees and administers is the Department of Higher Education which will be referred subsequently.

### **3.1.2 Relevant Legislations**

#### **(1) The Education Act 1996**

This Act aims to develop the educational system of the country to have the quality in the level of international standard. Simultaneously, the capabilities of an individual is being into consideration. The purpose of the Act is to meet the demands and expectations of the country as stated under Article 15. Thus, the education system of Malaysia consists of various levels; namely, pre-primary, primary, secondary, post-secondary and higher education.

This Act is a key function of the educational reform generated by the government under the purpose of education development in order to yield the higher standard for the unity of the citizens and Malaysian society.<sup>105</sup>

## **(2) The Private Higher Educational Institutions Act 1996**

This Act is enacted together with the Education Act 1996. This Act requires private universities to accept the Certificate of the Unified Examinations as a qualification for the entrance examination, except for local university, which was not required previously.<sup>106</sup>

## **(3) The National Council on Higher Education Act 1996**

This Act establishes an organization called The National Council on Higher Education with the authority and responsibility to plan, create and define a national policy on higher education and policy control on the number of student intakes, type of courses, quantum of fees, awarding diplomas and degrees, including the accreditation of courses.<sup>107</sup>

## **(4) The National Accreditation Board Act 1996**

This Act establishes the National Accreditation Board in order for programs and courses to be accredited with the purpose of ensuring the courses in higher education institutions, especially the private ones, to be highly qualified. The National Accreditation Board also provides advices and suggestions to the Minister of Education in regard to the courses approval by taking into account the appropriateness of the educational materials, quality assurance and educational standards.<sup>108</sup>

## **(5) The Universities and University Colleges Act 1971 (Latest Amendment 2012)**

The Universities and University Colleges Act 1971 is enacted to provide for the establishment, maintenance and administration of Universities and University Colleges and for other matters connected with it. Under the latest amendment of this Act, the Minister charged with the responsibility for higher education is responsible for the general direction of higher education and the administration of this Act which shall be in accordance with the national policies, strategies and guidelines on higher education formulated or determined by an authority established under any written law for such purposes.<sup>109</sup> Furthermore, it is prohibited by law to establish, form or promote or do anything or carry on any activities for the purpose of establishing or forming or promoting the establishment or formation of a

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<sup>105</sup> Varaporn Bowornsiri, Education Reform in Malaysia. <https://www.gotoknow.org/posts/69947>

<sup>106</sup> *Ibid*, "About the same".

<sup>107</sup> *Ibid*, "About the same".

<sup>108</sup> *Ibid*, "About the same".

<sup>109</sup> The Universities and University Colleges Act 1971 (Latest Amendment 2012), Section 3.

University or University College otherwise than in accordance with the provisions of this Act or the Private Higher Educational Institutions Act 1996.<sup>110</sup>

### **(6) The National Higher Education Fund Board Act 1997**

This Act is enacted in order to establish the Higher Education Fund with the purpose of providing educational assistance by loans. The objective of this establishment is to give the students the opportunity in studying in the higher education institutions in Malaysia. The loan made under this Act is for the tuition, educational materials and the cost of living during the study. In addition, the Act brings about the saving projects with the purpose of encouraging children to start saving money from the first grade until higher education. The expected outcome of such regulation is to yield higher opportunity for students to enter the higher education institutions without financial hardship.<sup>111</sup>

### **3.1.3 Governmental Authority**

#### **(1) Ministry of Education**

The Ministry of Education (MOE) or also known as Kementerian Pendidikan is a government ministry responsible for Malaysian educational matters. The current minister is Tan Sri Muhyiddin Yassin who is also Deputy Prime Minister of Malaysia and Idris bin Jusoh who serves as Minister II. MOE has been founded since 2004 and changed name from Kementerian Pendidikan Malaysia to Kementerian Pelajaran Malaysia, which is only in charge of secondary level of education. The higher or tertiary education are taken over by a new ministry, Ministry of Higher Education until 2013 where Prime Minister Najib Razak announced the two ministry will be merged to form a unite Ministry of Education.

#### **a. Administrative Structure**

The Ministry of Education is governed and under the supervision of Minister of Education Malaysia, Secretary-General of Education and Deputy of Education I and II respectively.<sup>112</sup>

The agencies under the supervision of the Ministry of Education are as follows:

#### **3.1) Under the Authority of Secretary-General**

- 1) Internal Audit Division
- 2) Corporate Communications Unit
- 3) Key Performance Indicator Unit
- 4) Education Performance and Delivery Unit

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<sup>110</sup> The Universities and University Colleges Act 1971 (Latest Amendment 2012), Section 23.

<sup>111</sup> *Ibid*, "About the same".

<sup>112</sup> Ministry of Education of the Federal Republic of Malaysia, available online at <http://www.moe.gov.my/?lang=en>

- 5) Integrity Unit
- 6) Legal Advisor Office
- 3.2) Deputy Secretary-General (Education Development)
  - 1) Education Development Division
  - 2) Procurement and Asset Management Division
  - 3) Policy and International Relations Division
  - 4) Scholarship Division
  - 5) School Audit Division
- 3.3) Deputy Secretary-General (Management)
  - 1) Finance Division
  - 2) Human Resource Management Division
  - 3) Account Division
  - 4) Competency Development and Assessment Division
  - 5) Psychology and Counselling Division
  - 6) Information Management Division
  - 7) Management Services Division
- 3.4) Director-General of Education
  - 3.4.1) Deputy Director-General of Education (Education Development Policy Sector)
    - 1) Educational Planning and Research Division
    - 2) Curriculum Development Division
    - 3) Examination Syndicate
    - 4) Educational Technology Division
    - 5) Textbook Division
    - 6) The National Book Council of Malaysia
  - 3.4.2) Deputy Director-General of Education (Education Operation Sector)
    - 1) School Management Division
    - 2) Technical and Vocational Education Division
    - 3) Islamic Education Division
    - 4) Special Education Division
    - 5) Fully Residential and Excellence Schools Management Division
    - 6) Sports Division
    - 7) Private Education Division
    - 8) Co-Curricular and Arts Division
  - 3.4.3) Deputy Director-General of Education (Teaching Professionalism Development Sector)
    - 1) Teacher Training Division

- 2) Aminuddin Baki Institute
- 3) Inspectorate of Schools
- 4) Institute of Teacher Education
- 3.4.4) Under the Authority of Director-General of Education
  - 1) Matriculation Division
  - 2) Perak State Education Department
  - 3) Selangor State Education Department
  - 4) Sarawak State Education Department
  - 5) Sabah State Education Department
  - 6) Johor State Education Department
  - 7) Penang State Education Department
  - 8) Kuala Lumpur Education Department
  - 9) Terengganu State Education Department
  - 10) Pahang State Education Department
  - 11) Kedah State Education Department
  - 12) Kelantan State Education Department
  - 13) Malacca State Education Department
  - 14) Negeri Sembilan State Education Department
  - 15) Perlis State Education Department
  - 16) Labuan Education Department
  - 17) Putrajaya Education Department

#### **b. Competent Authority**

Ministry of Education is responsible for all levels of education from secondary to higher education. The Ministry of Education has overall policy on the development of the country with the focus on promoting and supporting the quality of education that emphasizes individualized learning. In doing this, the potentiality development of people to be knowledgeable with full competence would constantly drive and develop the country.<sup>113</sup>

#### **(2) Department of Higher Education**

In addition to the agencies mentioned above, the Department of Higher Education is functioning with the purpose of achieving the policy for development of the education systems and for benefit of governance and regulation. For such reason, the Department of Higher Education was built up and is under the supervision of the Ministry of Education. This Department will monitor the tasks and institutions relating to the educational system of higher education; for example, university, college or vocational education Polytechnic Institute.

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<sup>113</sup> Basic Information on Authority of the Ministry of Education, Ministry of Education of the Federal Republic of Malaysia, available online at <http://www.moe.gov.my/en/visi-misi>

#### **a. Administrative Structure**

In terms of management and the structure of the agency, the top position is Director General of the Agency (Director General). In addition, there are two Chief Deputy's Department (Deputy of Director General) for supporting the work of the Director General in order to accomplish effectively and to reach the target.

#### **b. Competent Authority**

Department of Higher Education has the authority to develop policies and to determine the direction of education. In addition, the Department is also responsible for the regulation of the budget planning under the appropriate measure.

### **(3) Department of Education Polytechnic**

The Department of Education Polytechnic or vocational education is an agency set up especially for the supervision of the Polytechnic Institutes and vocational education in order to develop and promote educational levels of diploma and advanced diploma to meet the needs of the labor market.

#### **a. Administrative Structure**

The Department of Education Polytechnic is under the regulation of the Ministry of Education. The Director General is the head of the Department and there are two Deputy Director Generals dealing with the strategic and the operation as follows:

The Deputy Director General (Strategic) supervises 6 divisions; namely, (1) the Policy Development Division, (2) the Industrial Relations, Detection of Graduates and Alumni Division, (3) the Research and Development Centre, (4) the Curriculum Development and Evaluation Division, (5) the Training and Career Development Division, and (6) the Management Services Division.

On the other hand, the Deputy Director General (Operation) supervises 4 divisions; namely, (1) the Academic Development Division, (2) the Examination and Assessment Division, (3) the Student Enrolment Division and (4) the Student Welfare Division.

#### **b. Competent Authority**

Authority of the Department of Education Polytechnic focus on policy, educational Promotion of the Polytechnic Institutes under the objective of accomplishing the educational and vocational development.

### **(4) Department of College Education**

The Department of College Education is functioning to widen the access to education, and to enhance the socio-economic status and welfare of the community through training and skills programmes and lifelong learning.

#### **a. Administrative Structure**

The Department of College Education is under the supervision of the Ministry of Education. The head of the Department is Director General with 6 nominated Directors controlling sections; namely, (1) Policy and Curriculum Development, (2) Academic Development, (3) Exam and Assessment, (4) Student Welfare, (5) Industrial Relations and Graduate Tracer, and (6) Student Intake.

#### **b. Competent Authority**

The Department has responsibility in applying policies concerning the direction for the institutions in the type of college, regulation, intake, programs design, examination and assessment are simultaneously the tasks of the Department. In regard to the programs design, the vocational education is the main mission and the job training is to be incorporated in many programs; namely, financial accounting, engineering, etc.

### **(5) Department of Private Education<sup>114</sup>**

#### **a. Administrative structure**

The Department of Private Education is composed of 3 divisions, namely, (1) Planning and Research Division, (2) Registration and Standards Division, and (3) Enforcement Division.

#### **b. Competent authority**

The Department of Private Education, Ministry of Education Malaysia is responsible in monitoring all aspects of establishment, registration and enforcement of private education, which includes pre-schools, primary schools, secondary schools, tuition centres, language centres and skill-based centres. This Department is responsible in ensuring that the private education plays significant role in making education more accessible to all levels of society. Hence, private education is gaining a more important role in supplementing and complementing to the national educational system.

## **3.2 Labour Law**

### **3.2.1 Introduction**

The area of Malaysian labour law involves with the principle in determining the terms and conditions of the contract of service, rights and duties of the parties, labour protection, welfare of the employee, workplace safety, the encouragement of skill development prescribed by law and relevant government authorities.

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<sup>114</sup> Kindergarten Malaysia, Ministry of Education, available at <http://www.kindergartenmalaysia.com/en/Default.asp?Page=720>, accessed 9 July 2017.

### **3.2.2 Relevant Legislations**

#### **3.2.2.1 Contract of service**

The contract of service under the Malaysian law is described in the Malaysia Employment Act 1955. However, this Act only applies with the contract of service but not applicable with the contract for service. The contract of service also includes the Apprenticeship contract. Therefore, to understand the scope of the labour law, it is necessary to understand the element and the differences between the contract for service and the contract of service as follows:

#### **(1) Type of the hiring contracts under Malaysian law**

##### **a. Contract for service**

The contract for service is an agreement whereby a person is engaged as an independence contractor, such as a self-employed person, a vendor or a freelancer for carrying out an assignment for a project for his establishment.<sup>115</sup>

##### **b. Contract of service**

The definition of the contract of service is described in Article 2 (1) of the Employment Act 1955 which is “contract of service means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract.”

##### **c. Apprenticeship contract**

Apprenticeship contract means a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall not be less than two years in the course of which the apprentice is bound to work in the employer’s service.

#### **(2) The characteristic of the contract of service**

Since the contract of service is the agreement between the employer and employee whereby the employer has superior bargaining power, thus the content of Employment Act 1955 is more favourable to the employee. Such Act determines that the agreement will not

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<sup>115</sup> Ministry of Human Resources, <http://minimumwages.mohr.gov.my/questions/what-is-the-difference-between-a-contract-of-service-and-a-contract-for-service/>, Retrieved 23 Nov. 2015.



prohibit the employee to join a registered trade union or to associate with any other persons for the purpose of organising a trade union.<sup>116</sup>

Furthermore, for the purpose to protect the employee, the law determine that the agreement shall contain the termination clause. If the agreement does not describe such provision, the terminating party shall notify another party his intention to terminate the contract not less than<sup>117</sup> (1) four weeks' notice if the employee has been employed for less than two years; or (2) six weeks' notice if the employee has been employed for two year or more but less than five years; or (3) eight weeks' notice if the employee has been employed for five years or more.<sup>118</sup> However, the employer is entitled, upon employee's misconduct, After the due inquiry, the employer is entitled to (1) dismiss the employee without notice, (2) downgrade the employee, (3) impose any other lesser punishment as he deems appropriate, or suspend the employee without paying the wages but for a period not exceeding two weeks.<sup>119</sup>

Regarding the breach of employment contract, the employer shall be deemed to break the contract of service with the employee if he fails to pay the wages no later than the seventh date form the payment period.<sup>120</sup> Meanwhile, the employee shall be deemed to break the contract of service if he has been continuously absent from work for more than two consecutive working days without prior leave from the employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform the employer prior to or the earliest opportunity during such absence.<sup>121</sup> Such breach of contract results in a party to a contract of service being able to terminate the contract without notice in the event of any wilful breach by the other party.<sup>122</sup>

The restraint of trade is generally not allowed to determine the contract. However, for the purpose of protecting employer's business, the Contracts Act 1950 has determined exception to add the restraint of trade in the contract of service since it is the nature of the agreement that the employee agrees to serve his employer, the law determine the exception to prevent the employee from carrying on a business of the same nature as the business of the employer.<sup>123</sup> This is because it may lead to the incident where the

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<sup>116</sup> Malaysia Employment Act, 1995, section 8.

<sup>117</sup> *Ibid*, Section 12(2).

<sup>118</sup> *Ibid*, Section 12(2).

<sup>120</sup> *Ibid*, Section 15(1) and Section 19.

<sup>120</sup> *Ibid*, Section 15(1) and Section 19.

<sup>121</sup> *Ibid*, Section 15(2).

<sup>122</sup> *Ibid*, Section 13(2).

<sup>123</sup> Contracts Act, 1950, Section 28.

employee carries on the business competing with the employer, in which such action is hostile to the employer

### **3.2.2.2 Employee**

#### **(1) Types of employee under Malaysian labour law**

Employee means any person or class of persons as described in the First Schedule attached to The Malaysia Employment Act 1955 to the extent specified therein or under the Minister's order.<sup>124</sup> Under the general principle of labour law, the employee is the party that is protected under labour protection law in many aspects, including minimum wages, annual leave, ceiling on working hours, right to hospital treatment, and compensation for termination in certain cases.

The Malaysian law determines employee in many types by his expertise and the type of contract, which can be categorised as follow:

##### **a. The employee under a general contract of service**

The Malaysian labour law categorise the feature of the employee in the Schedule to the extent of Employment Act 1955 as follows;

Firstly, consider by the wages: to consider whether the person is the employee or not is by his wages. The law stated that if the person gains the wages not exceeding 1500 Ringgit/month, that person is considered as an employee under the law.

Secondly, consider by the type of work: regardless the wages of the person, if the person enters into a contract of service he will be considered as an employee if for the purpose of the work listed below;

1) Manual labour or apprentice, provided that the person is employed partly in manual and partly in some other capacity, such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work on such wage period.

2) the employee who engages in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes

3) the employee who supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work.

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<sup>124</sup> Malaysia Employment Act 1955, Section 2.

4) the employee who engages in any capacity in any vessel registered in Malaysia and who is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time or not the holder of a local certificates as defined in the Merchant Shipping Ordinance 1952 since these employees will be applied under the above-mentioned law that adopted from the Maritime Labour Convention, 2006 which Malaysia is the contracting party.<sup>125</sup>

5) the employee who engages in domestic servant not connection with any trade, business or profession carried by the employer and includes the cook, house servant, butler, children's nurse, gardener, washer, watchman, or cleaner of any vehicle licensed for private use.

## **b. Foreign Employee**

Foreign employee means the employee who is not a Malaysian citizen. The law of Malaysia is more favourable to the Malaysian employee. Hiring the foreign will be controlled more strictly than the local employee. There are some special obligations to be complied with in hiring the foreigner: the employer who employs a foreign employee shall furnish the information to the office of the Director General of Labour within 14 days of the employment. Furthermore, in the event that the employer would like to reduce the number of his employee, he shall not be able to terminate the service of the local employee unless he has first terminated the services of all foreign employees.

Nevertheless, even the Malaysian labour law is more favour to the local employee, but the protection from the discrimination is equal to all employees regardless he is a local or a foreign employee. The Director General of Labour has power to inquire any complaint from the employee and issue the directive as deem necessary to resolve the matter. If the employer fails to comply with such directive, he will be considered to commit an offence.<sup>126</sup>

## **(2) Employee's benefit under Malaysian Labour Law**

### **a. Wages**

The minimum wages will be specified annually by the National Wages Consultative Council which is appointed by the National Wages Consultative Council Act 2011. The time of the payment of wages is stated in Part III of the Employment Act 1955, stating that the

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<sup>125</sup> Matthaya Yuvamit and Supanee Suanin. (2015). Preparation for the Compliance of Seafarer Maritime Safety Standards under MLC 2006 in ASEAN Countries, *Proceedings of Global Conference on Logistics, Transportation, and Traffic*, July 22-24, 2015, Tokyo, Japan, pp. 123-133.

<sup>126</sup> Malaysia Employment Act, 1955, Section 60 L. (Director General may inquire into complaint) and Section 101 (Offence in connection with inquiry or inspection).

parties may specify a wage period but it shall not exceed one month. If the parties do not specify so, it shall be deemed that the wage period is 1 month. The employer shall pay each of his employees not later than the seventh day after the last day of any wage period<sup>127</sup> if the employer fails to do so, the employee may terminate the contract without notice.<sup>128</sup>

In case that the employee would like to ask for advance payment, the aggregate amount shall not exceed the wages which the employee earned in the preceding month, except that the employee asks for the advance payment for the purpose of (1) purchasing, building or improving a house; (2) purchasing land; (3) purchasing livestock; (4) purchasing a motorcar, a motorcycle or a bicycle; or (5) purchasing shares of the employer's business offered for sale by the employer.<sup>129</sup> The employer shall not make any deduction as interest of advance wages.<sup>130</sup>

The payment of wages has to be in legal tender directly to the employee. The payment of wages through bank can be done with the employee's written consent.<sup>131</sup> In the event that the employee is under imprisonment or custody, the wages shall not be payable unless the employee attends the court as a witness on his employer's behalf.<sup>132</sup>

#### **b. Female Employee**

The female employees are more delicate and need more protection than the male employees do. Malaysian labour law prohibits the employer from hiring the female employee to work in an industrial or agricultural between 10.00 pm and 5.00 am or to be engaged in the underground work.<sup>133</sup> Moreover, for industrial or agricultural work, the employer cannot assign female employee to work for a period of eleven consecutive hours without break.<sup>134</sup>

The female employee shall be entitled to maternity leave for a period of not less than 60 consecutive days<sup>135</sup> and receive maternity allowance from the employer if she has

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<sup>127</sup> *Ibid*, section 18.

<sup>128</sup> *Ibid*, section 13(2).

<sup>129</sup> *Ibid*, section 22.

<sup>130</sup> *Ibid*, section 27.

<sup>131</sup> *Ibid*, section 25(a).

<sup>132</sup> *Ibid*, section 23.

<sup>133</sup> *Ibid*, section 35.

<sup>134</sup> *Ibid*, section 34(1).

<sup>135</sup> *Ibid*, section 37(1)(a).

been employed in 4 months before confinement and has been employed by the employer not less than 90 days during the nine months immediately before the confinement.<sup>136</sup>

The confinement means parturition resulting after at least 28 weeks of pregnancy in the issue of a child or children whether alive or dead.<sup>137</sup> The Employment Act 1955 prohibits the dismissal of any female employee who absent from work as a result of her pregnancy or confinement,<sup>138</sup> even she is unable to work during such a period.

### **c. Hours of work**

The amount of hours of work is determined in the Employment Act 1955.<sup>139</sup> An employee shall not be required to work (1) more than 5 consecutive hours without the leisure period which must not less than 30 minutes; (2) more than 8 hours per day; (3) in excess of a spread over period of 10 hours in one day; or (4) not exceed 48 hours per week.

However, the above-mentioned hours of work could be extended in these cases<sup>140</sup> (1) accident or threaten in the place of work (2) the work is essential to the life of the community (3) the work is essential for the defense or security of Malaysia (4) urgent work that has to be done with the machinery or plant (5) there is an unforeseeable interruption of work (6) the work in industrial undertaking essential to economy of Malaysia or essential services defined in the Industrial Relations Act 1967.

### **d. Overtime work**

To ensure that the employee will receive the fair wages from working in excess of the normal working hours, the Employment Act 1955 stated that the employee shall be paid not less than one and a half time of the wages in the normal working hours calculate on the hourly basis.<sup>141</sup>

The definition of the word “overtime” means the number of hours of work carried out in excess of the normal hour of work per day<sup>142</sup> but the employee shall not be required to work overtime exceeding the limit prescribed by the Minister of the Human Resources.<sup>143</sup>

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<sup>136</sup> *Ibid*, section 37(2)(a).

<sup>137</sup> *Ibid*, section 2(1).

<sup>138</sup> *Ibid*, section 42(1).

<sup>139</sup> *Ibid*, section 60A(1).

<sup>140</sup> *Ibid*, section 60A(2).

<sup>141</sup> *Ibid*, section 60A(3)(a).

<sup>142</sup> *Ibid*, section 60A(3)(b).

<sup>143</sup> *Ibid*, section 60A(4)(a).

### e. Rest day

The employee shall be allowed to have one full rest day in a week as determined by the employer. If the employee is required to work on the rest day, the employer must pay at the rate of the wages as described below;

#### In the case of daily employment

- 1) the wages of one day if the period of working in the rest day does not exceed half day.<sup>144</sup>
- 2) the wages of two days if the period of working in the rest day is more than half day but does not exceed the normal period of normal working day.<sup>145</sup>

#### In case of monthly employment

- 1) the wages of half day if the period of working in the rest day does not exceed half day of the normal working day.<sup>146</sup>
- 2) the wages of one day if the period of working in the rest day is more than half day but does not exceed the normal period of normal working day.<sup>147</sup>

The rate of wages of working on rest day shall not less than two times of hourly rate of pay.<sup>148</sup>

### f. Annual leave

The employee is entitled to have the paid annual leave differ on the period of services as follows;<sup>149</sup>

- 1) 8 days for every 12 months of continuous service with the same employer for a period of less than 2 years.
- 2) 12 days for every 12 months of continuous service with the same employer for a period of 2 years or more but less than 5 years.
- 3) 16 days for every 12 months of continuous service with the same employer for a period of 5 years or more.

If the employee does not complete 12 months of continuous services with the same employer during the year in which the contract of service terminates, the employee's right on the paid annual leave shall be calculated in the proportion of months of service.

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<sup>144</sup> *Ibid*, section 60(3)(a)(i).

<sup>145</sup> *Ibid*, section 60(3)(a)(ii).

<sup>146</sup> *Ibid*, section 60(3)(b)(i).

<sup>147</sup> *Ibid*, section 60(3)(b)(ii).

<sup>148</sup> *Ibid*, section 60(3)(c).

<sup>149</sup> *Ibid*, section 60E(1).

Provided that any fraction of a day of annual leave so calculated which is less than half of a day, such annual leave shall be disregarded and if the fraction is half day or more, the annual leave shall be deemed to be one day.

#### **g. Public Holidays**

The employee is entitled to have the paid holiday at the rate of ordinary working day. There are two types of holidays in Malaysia which are:

(1) the gazette public holidays<sup>150</sup> which are: (a) the National Day; (b) the Birthday of Yang di-Pertua Agong (the King's birthday); (c) the Birthday of the Ruler or Yang di-Pertua Negeri;<sup>151</sup> and (d) the Worker's day;<sup>152</sup> and

(2) the holidays that described in section 8 of the Holidays Act 1951.<sup>153</sup>

If such a holiday is the same day as a rest day, the employee shall be entitled to wages as compensation at the ordinary rate he has been receiving. Furthermore, if the employee carries out any overtime work in a public holiday, the employee shall be paid not less than three times the ordinary rate.<sup>154</sup>

#### **h. Sick leave**

There are two types of taking sick leave under the law which are (1) where no hospitalisation is necessary<sup>155</sup>, the employee is entitled to have paid sick leave and the number of such leave depends on the period of service. The employee shall have 14 days in aggregate in each calendar year if he has been employed for less than 2 years, 18 days if he has been employed for two years or more but less than 5 years and 22 days if he has been employed 5 years or more; and (2) if the hospitalisation is necessary<sup>156</sup> the employee can take 60 days in the aggregate in each calendar year but may be certified by the registered medical practitioner or medical officer. The employer shall pay the employee his ordinary rate of pay for every day of such sick leave.<sup>157</sup> On the contrary, if the employee absents on sick leave which is not certified by a registered medical practitioner, a medical officer, or a dental surgeon, or he is certified so but has not informed or attempted to

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<sup>150</sup> *Ibid*, Section 60D(a).

<sup>151</sup> [https://en.wikipedia.org/wiki/Yang\\_di-Pertua\\_Negeri](https://en.wikipedia.org/wiki/Yang_di-Pertua_Negeri) accessed 14 November 2015.

<sup>152</sup> *Ibid*, section 60D(1).

<sup>153</sup> The Holidays Act, 1951, Section 8.

<sup>154</sup> Malaysia Employment Act, 1955, Section 60D(3)(aaa).

<sup>155</sup> *Ibid*, Section 60F(aa).

<sup>156</sup> *Ibid*, section 60F (bb).

<sup>157</sup> *Ibid*, Section 60F(3).

inform the employer within 48 hours; he shall be deemed to absent from work without permission of the employer without reasonable excuse.<sup>158</sup>

#### **i. Employee's right to have the compensation for injury suffered in course of employment**

Under Malaysian labour law, the employee is entitled to compensation and any expenses incurred in the treatment and rehabilitation for injury arise from working under the Workmen's Compensation Act 1952, which requires the employer to pay such compensation and expenses.<sup>159</sup> In accordance with the Workmen's Compensation Act, 1952, the employee shall, to receive the compensation, have the treatment in a registered medical practitioner certifies that his treatment in an approved hospital. If the registered medical practitioner in charge of an approved hospital takes the opinion that the employee should receive further treatment and be transferred to a special hospital as proclaimed by the Minister, and the treatment should be done by a way that is suitable for the injury;<sup>160</sup> the employee shall be entitled to the compensation.

Nevertheless, an employer shall not be liable to pay compensation in respect of any injury (1) which does not disable the workman for a period of at least four days from earning full wages at the work at which he was employed;<sup>161</sup> or (2) resulting from an accident if it is proved that the injury to the workman is directly attributable to the workman having been at the time thereof under the influence of alcohol or a drug;<sup>162</sup> or (3) resulting from a deliberate self-injury or the deliberate aggravation of an accidental injury;<sup>163</sup> or (4) resulting from a false statement made by the employee falsely stating to the employer that he has never been suffered or injured from the disease or injury before.<sup>164</sup>

#### **j. Employee's entitlement to termination and lay-off benefits**

The employee's right to receive the termination and dismissal benefits are described in Employment (Termination and Lay-Off Benefits) Regulations 1980, issued by virtue of the Employment Act, 1955, Part XII A, which empowered the Minister to prescribe the termination benefits, lay-off benefits and retirement benefits. The employer shall be liable

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<sup>158</sup> *Ibid*, section 60F(2).

<sup>159</sup> Workmen's Compensation Act 1952, Section 4.

<sup>160</sup> *Ibid*, section 15.

<sup>161</sup> *Ibid*, section 4(2)(a).

<sup>162</sup> *Ibid*, section 4(2)(b).

<sup>163</sup> *Ibid*, section 4(2)(c).

<sup>164</sup> *Ibid*, Section 5.



to pay termination or lay-off benefits payment.<sup>165</sup> The act of the employer will be deemed to be laid-off if (1) the employer does not provide work for the employee on at least a total of twelve normal working days within any period of four consecutive weeks<sup>166</sup> and (2) the employee is not entitled to any remuneration under the contract for the period of four consecutive weeks since he has not been assigned to perform any task.<sup>167</sup>

Regarding the compensation in case of termination or lay-off, the amount of such benefits are (1) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years<sup>168</sup> (2) fifteen days' wages for every year of employment under a continuous contract of serviced with the employer if he has been employed by that employer for two years or more but less than five years and<sup>169</sup> (3) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five year or more.<sup>170</sup> The benefits shall be paid by the employer to the employee not later than 7 days after relevant date.

However, the employee may not be entitled to have the benefits as mentioned above if the contract of service is terminated in the result of (1) the employee attaining in the age of retirement<sup>171</sup> (2) employee' s misconduct<sup>172</sup> (3) voluntary resignation of the employee<sup>173</sup>. In addition, if the period of a contract of service is extended or a contract of service is renewed immediately after the previous contract of service was terminated, the employee is not entitled to get the benefits from such termination.

### 3.2.2.3 Employer

Employer means any person entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first mentioned person, and the word “employ”, with its grammatical variations and cognate expressions, shall be construed accordingly.<sup>174</sup>

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<sup>165</sup> Employment (Termination and Lay-Off Benefits) Regulations 1980 , section 3(1).

<sup>166</sup> *Ibid*, section 5(1)(a).

<sup>167</sup> *Ibid*, Section 5

<sup>168</sup> *Ibid*, section 6(1)(a).

<sup>169</sup> *Ibid*, section 6(1)(b).

<sup>170</sup> *Ibid*, section 6(1)(c).

<sup>171</sup> *Ibid*, section 4(1)(a).

<sup>172</sup> *Ibid*, section 4(1)(b).

<sup>173</sup> *Ibid*, section 4(1)(c).

<sup>174</sup> Employment Act 1955, Section 2.

In general, the employer is the business owner who has the better economic status than the employee and has more bargaining power. Therefore, the principle of labour law, with its purposes to be enforced against the employer, tends to impose duty and restriction on the employer, rather than benefit him. Anyway, the employer still has the fundamental right under the contract of service to terminate the contract if an employee breaches any material term of the contract.

Under Malaysian labour law, the employer has right and duty as follow:

### **(1) Employer's right under the contract of service**

The Employment Act 1955 describes the right of the employer under the contract of service as follows:

#### **a. Right to terminate and dismiss**

The employer has the right to terminate the contract of service anytime in the period of the contract. To terminate the contract, the employer has to notify the employee in advance of such termination as specified in written agreement. The length of such notice is not specified in the agreement, such length of period will be as follows:

- 1) 4 weeks' notice if the employee has been employed for less than 2 years on the date that the notice is given;
- 2) 6 weeks' notice if the employee has been employed for 2 years or more but less than 5 years on such date;
- 3) 8 weeks' notice if the employee has been employed for more than 5 years or more on such date.

#### **b. Right to join the Trade Union**

The contract of service must not prohibit the employee to join a registered trade union or to associate with any other persons for the purpose of organising a trade union. On the other hand, the employer has the same right as the employee to join the trade union to protect his lawful right.<sup>175</sup>

#### **c. Right to make a deduction from wages**

Generally, the labour law gives the precedence on employee's wages by prohibit the employer from making any deduction from the wages unless it is allowed by law.<sup>176</sup> The lawful deduction that described by the law are (1) deductions to the extent of any overpayment of wages that are made by the employer's mistake but shall made during the

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<sup>175</sup> Industrial Relation Act, 1967, section 4.

<sup>176</sup> Malaysia Employment Act, 1955, Section 24.

immediately preceding three months from the month in which deductions are to be made. (2) deductions for the indemnity due to the employer by the employee from the termination of contract without notice or before the end of the period prescribe in the contract. (3) deductions for the advance payment of wages but no interest is charged for the advance payment. (4) the deductions authorised in other written law.

## **(2) Employer's duty under the labour laws**

Apart from the duty to provide the employee's benefits as stated above. The employer is also required to provide the safe working environment and to recognize the trade union as well.

### **a. Duties to provide safety and security at work**

The employer must provide a working environment for his employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work<sup>177</sup> as well as the appropriate revise a written statement of general policy with respect to the safety and health at work of employees.<sup>178</sup> If the employer fails to comply with the law on these matters he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.<sup>179</sup>

### **b. Duty to recognise the Trade Union**

The contract of service between employer and employee shall not be the restriction of right of the employee to join a trade union, associate with other persons for the purpose of organising a trade union, participate in the activities of a trade union, or get involved a trade union, according to Employment Act 1955, Section 8. The law clearly states it is the right of every employee which shall not be limited or restrained.<sup>180</sup> In addition, a foreign employee can also join a trade union, since there is no prohibition in any relating legislation.

### **3.2.2.4 Encouragement of skill development**

The legislation designed for the encouragement of skill development in Malaysia is Human Resource Development Act 2001, which states that there shall be a levy of money

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<sup>177</sup> The Occupational Safety and Health Act, 1994, Section 15.

<sup>178</sup> *Ibid*, Section 16.

<sup>179</sup> *Ibid*, Section 19.

<sup>180</sup> The Industrial Relations Act 1967, Section 5(1).

to set up a fund for registered companies. They shall use such money to provide training for employees and apprentices in order to develop their skill.<sup>181</sup>

This legislation requires employers in certain types of industries specified in the First Schedule<sup>182</sup> to be registered and pay an amount to the aforesaid companies for the purpose of developing the workmanship of the employees.<sup>183</sup> To achieve this, it also requires the employers to make the payment of 1 percent of the total monthly wages of the employees to the fund.<sup>184</sup> Nonetheless, an employer, who is not required under this act to do so, may voluntarily apply for the register and pay an amount of 0.5 percent of the total monthly wages to such a fund.<sup>185</sup>

The money collected under this act is not only used for the purpose of developing the workmanship of the employees, but also for financial assistance to employers by way of loan for the purpose of providing training for his employees<sup>186</sup>

### **3.2.3 Governmental Authority**

#### **3.2.3.1 Ministry of Human Resources**

##### **a. Administrative Structure**

Ministry of Human Resources consists of many departments<sup>187</sup> which are Labour Department of Peninsular Malaysia, Department of Occupational Safety and Health, Manpower Department, Department of Skills Development, Industrial Relations Department, Labour Department of Sabah, Labour Department of Sarawak, Trade Union Affairs Department, and Industrial Court.

##### **b. Competent Authority**

Ministry of Human Resources is in charge of making policies in relation to labour aspect and direct the situation in relation to manpower in compliance with Malaysia's commitment towards the United Nations<sup>188</sup>. It also has objectives to, for example, grow and increase a workforce that is effective, knowledgeable, well-disciplined, caring and responsive

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<sup>181</sup> Human Resource Development Act 2001, section 3.

<sup>182</sup> *Ibid*, section 1(2).

<sup>183</sup> *Ibid*, section 13.

<sup>184</sup> *Ibid*, section 14(1).

<sup>185</sup> *Ibid*, section 15.

<sup>186</sup> *Ibid*, section 9 (2)(a)(b).

<sup>187</sup> Ministry of Human Resources, "Organization Chart: Ministry of Human Resources," [http://www.mohr.gov.my/pdf/orgchart/carta\\_organisasi\\_MOHR\\_bi.pdf](http://www.mohr.gov.my/pdf/orgchart/carta_organisasi_MOHR_bi.pdf), accessed 24 December 2015.

<sup>188</sup> Wikipedia, "Ministry of Human Resources (Malaysia)," [https://en.wikipedia.org/wiki/Ministry\\_of\\_Human\\_Resources\\_\(Malaysia\)](https://en.wikipedia.org/wiki/Ministry_of_Human_Resources_(Malaysia)), accessed 24 December 2015.

in order to develop labor environment which will eventually lead to the economic growth and more job opportunities.<sup>189</sup>

### 3.2.3.2 Labour Department

#### a. Administrative Structure

Labour Department was established in 1912 and is one of the 12 departments and authorities under the control of Ministry of Human Resources. Before the 1960's, its objective was to protect the interest of the employees in electricity factories and mines. However, in 1970, it was merged with Department of Industrial Relations. The objective of this unity was to resolve disputes which involves employees and trade unions.<sup>190</sup>

#### b. Competent Authority

Labour Department is committed to encourage the labour administration in order to improve the welfare of the employees and also the interest of the employers. In addition, it aims to increase job opportunities as demanded by labour market.<sup>191</sup> The Employment Act 1955 stipulates that the Director-General of Labour Department, appointed by Yang di-Pertuan Agong,<sup>192</sup> is empowered to consider complaint and inquire labour disputes in relation to the payment of wages, the wages agreed under the contract of service, and other benefits of the employees as established by law<sup>193</sup>. Additionally, the Minister of Labour Department is authorised to inspect any workplace without prior notice if he finds it necessary.<sup>194</sup>

To commence the procedure in Director General's inquiry the complaining person shall submit the written statement with the remedy to the Director General. Once the Director General received the complaint, he is entitled to issue the summons to another party and inform the date, time and place that person required to attend the inquiry also summons the third party if he deems appropriate.<sup>195</sup>

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<sup>189</sup> Wikipedia, *Ibid*.

<sup>190</sup> Ministry of Human Resources, "History JTKSM," <http://jtksm.mohr.gov.my/index.php/my/mengenai-kami/sejarah-jtksm>, accessed 24 December 2015.

<sup>191</sup> Labour Department Peninsular Malaysia, <http://jtksm.mohr.gov.my/index.php/my/mengenai-kami/visi-misi>, accessed 24 December 2015.

<sup>192</sup> Malaysia Employment Act, 1955, Section 3.

<sup>193</sup> *Ibid*, Section 69.

<sup>194</sup> *Ibid*, Section 66.

<sup>197</sup> Department of Occupational Safety and Health, "Organization Chart," [http://www.dosh.gov.my/index.php?option=com\\_content&view=article&id=428&Itemid=185&lang=en](http://www.dosh.gov.my/index.php?option=com_content&view=article&id=428&Itemid=185&lang=en), accessed 24 December 2015.

The disputing parties are bound with the Director General's decision. If any party disagrees with the decision, he can appeal against such decision to the High Court.<sup>196</sup>

### **3.2.3.3 Occupational Safety and Health Department**

#### **a. Administrative Structure**

Occupational Safety and Health Department has the Director-General as a chief executive. It consists of 2 major sub-departments<sup>197</sup> which are Occupational Health Sub-department and Occupational Safety sub-department. Both have the Deputy Minister as their chief executive. Occupational Health Sub-department consists of many sections including Forensic Engineering, Chemical Management, Industrial Hygiene and Ergonomics. Similarly, Occupational Safety sub-department consists of a number of sections, such as Petroleum Safety, Building Construction Safety, Industrial Safety, SMI and Non Factory Sector.

#### **b. Competent Authority**

Occupational Safety and Health Department is responsible for management, administration and enforcement of law regarding safety and sanitary in workplace, by studying safety culture and sanitary culture in various workplaces. It also aims for safety and sanitary of employees from every occupations.<sup>198</sup>

### **3.2.3.3 Industrial Court of Malaysia**

#### **a. Administrative Structure**

Industrial Court of Malaysia consists of the President of Industrial Court of Malaysia, appointed by the King of Malaysia; and a panel of persons representing employers and a panel of persons representing employees all of whom appointed by the Minister.<sup>199</sup> In

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<sup>197</sup> Department of Occupational Safety and Health, "Organization Chart," [http://www.dosh.gov.my/index.php?option=com\\_content&view=article&id=428&Itemid=185&lang=en](http://www.dosh.gov.my/index.php?option=com_content&view=article&id=428&Itemid=185&lang=en), accessed 24 December 2015.

<sup>197</sup> Department of Occupational Safety and Health, "Organization Chart," [http://www.dosh.gov.my/index.php?option=com\\_content&view=article&id=428&Itemid=185&lang=en](http://www.dosh.gov.my/index.php?option=com_content&view=article&id=428&Itemid=185&lang=en), accessed 24 December 2015.

<sup>198</sup> Department of Occupational Safety and Health, "Message from Director General: Ir. Mohtar bin Musri," [http://www.dosh.gov.my/index.php?option=com\\_content&view=article&id=946&Itemid=186&lang=en](http://www.dosh.gov.my/index.php?option=com_content&view=article&id=946&Itemid=186&lang=en), accessed 24 December 2015.

<sup>199</sup> Industrial Relation Act, 1967, Section 21.

dealing with any dispute, the court shall be constituted of the President and judges selected by the President, one from each of the said panels.<sup>200</sup>

### **b. Competent Authority**

The Industrial Court shall consider the dispute that Minister may, if that dispute is not otherwise resolved; refer the dispute to the Court.<sup>201</sup> The Court may summon the parties to attend the proceedings request for additional evidences or summon to give an opinion to the case.<sup>202</sup> If the party disagrees with the Court's decision, he is entitled to appeal against such decision to the High Court. The High Court decision shall be final and conclusive.<sup>203</sup>

## **3.3 Public Health Law**

### **3.3.1 Introduction**

The Malaysian health care system is likely to be a Pluralistic health care system which consists of multiple healing systems within a society, both Folk and Western Medicine. It is financed mainly through four sources; (1) direct taxation, (2) social insurance, (3) private health insurance and (4) out-of-pocket payments, and provides universal services by public and private sectors.

Public health sector intended to provide services focusing on public health services, curative care and disease prevention in three levels

#### **1. Primary care**

Primary health care is the closet health service level to people and community. Primary care is the element within primary health care that highlights on health care service including personal care, health promotion, disease prevention and rehabilitation. It is offered in health clinic, rural clinic, maternal and child clinic and mobile clinic.

#### **2. Secondary Care**

Secondary Health care concerned with critical care involving intense and elaborate measures for the diagnosis and treatment of a specified range of illness. It is usually offered in district hospital.

#### **3. Tertiary Care**

Tertiary Health care includes highly technical services for the treatment of individuals with complex or complicated health needs. Providers of tertiary care are health

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<sup>200</sup> *Ibid*, Section 22.

<sup>201</sup> *Ibid*, Section 26.

<sup>202</sup> *Ibid*, Section 29.

<sup>203</sup> *Ibid*, Section 33b.

professionals who are specialists in a particular clinical area. It is offered as usual in general hospital, state hospital and national referral hospital.

Alongside the government, a significant private sector has also been involved in the delivery of health care in abovementioned three levels. Public Health sector supply services by network of hospitals, which are under to Ministry of Health and other state agencies, offering comprehensive services those people will not pay a medical fee or if they are necessary to pay, they may pay in a very low rate because government supports the majority of expenses for medical treatment<sup>204</sup>.

In terms of public health policy, due to being a classic plural society consisting basically of three major groups – namely Malays 60 per cent, Chinese 30 per cent and Indians 10 per cent, it led to the economic disparities between the Malay and Chinese communities in the early days of independence. Therefore, it caused to form the New Economic Policy (NEP) in 1970s. The NEP's objectives are to eradicate poverty and to restructure Malaysian society in order to distribute income throughout society and eventually to correct and eliminate economic dominance of the Chinese. To achieves these objectives, the state assumed an active role in commerce and industry particularly in first two decades of the NEP. This was to make a meaningful contribution towards the attainment of the economic and social goals. The NEP was later replaced, beginning 1990, by the New Development Policy (NDP), with the board objective of attaining a balanced development in order to create a more united and just society. In February 1991, the former Prime Minister of Malaysia, Mahathir bin Mohamad introduced “ Vision 2020” <sup>205</sup> as follows:

*“By the year 2020, Malaysia is to be a united nation, with a confident Malaysian society, infused by strong moral and ethical values, living in a society that is democratic, liberal, caring, economically just and equitable, progressive and prosperous, and in full possession of an economy that is competitive, dynamic, robust and resilient.”*

To carry out this vision, Ministry of Health highlights to boost healthy trend which means physical and mental fitness, including cheerful life in society and a chance to participate in this trend, must be equal throughout Malaysian citizen.

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<sup>204</sup> Malaysian Medical Association. Health for all: reforming health care in Malaysia. Selangor Darul Ehsan: Academe Art & Printing Services Sdn. Bhd.; 1999 cited in Arthorn Riewpaiboon, Research on Health service system reform in Malaysia presented to Health Systems Research Institute, October 2000, p.4.

<sup>205</sup> Razali N. Human resources development in Malaysia; a study of the government 's role. ASEAN Economic Bulletin 1999,16(3) : 307-29.



### 3.3.2 Relevant Legislations

#### 3.3.2.1 Medical laws

##### (1) Law concerning National Health Security

There is no national social insurance scheme in Malaysia. However, Malaysia provides the two main social security funds<sup>206</sup> as follows

##### a) Employees Provident Fund (EPF)

This fund was established in accordance with the Employees Provident Fund Act 1951. Its purpose is to ensure the financial security for employees' retirement include getting sick through a Compulsory Savings scheme which provides every employee and employer shall be liable to pay monthly contributions on the amount of wages for the month at the rate respectively set out in the Schedule<sup>207</sup>. EPF is administrated by independent committee regulated by Ministry of Finance. It allocates amount of money into three separate funds categorized by different purpose of payment; account 1 at 60 per cent of whole fund for living after retirement, account 2 at 30 per cent for housing and undergraduate studying and the rest at 10 per cent for medical expenses. However, after 2007, Fund's members may disburse from account 2 for not more than 30 per cent of total savings in case of they need to pay more medical fees<sup>208</sup>.

##### b) Social Security Organization (SOCSO)

This organization is managed in accordance with the Employees Social Security Act 1969. It serves for employees who earn salary not more than 2,000 RM per month and the social security is compulsory for them. The contribution payable under this act in respect of an employee shall comprise contribution by the employer and contribution by the employee<sup>209</sup> and shall be paid to the organization at the fixed rates specified in Schedule

<sup>206</sup> Safurah Jaafar, Kamaliah Mohd Noh, et al, Malaysia Health System Review, (World Health Organization Regional Office for the Western Pacific, 2013), p.46.

<sup>207</sup> Employees Provident Fund Act 1951

Section 43 (1) Subject to section 52, every employee and every employer of a person who is an employee within the meaning of this Act shall be liable to pay monthly contributions on the amount of wages for the month at the rate respectively set out in the Third Schedule.

<sup>208</sup> National Health Security Office, ASEAN Health Care System: Article compilation book of Health Service System Analysis, (Bangkok: Sri Mueang Publishing co.,2012), p.71.

<sup>209</sup> Employees' Social Security Act 1969

##### Section 6 Contributions

(1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Organization.

(2) The contributions shall fall into the following two categories, namely:

(a) the contributions of the first category, being the contributions payable by or on behalf of

which are calculated with reference to monthly wages. The insured persons shall be entitled to the benefits in case of accident resulting in injury, sickness or disable as a result of an employment<sup>210</sup>.

Besides EPF and SOCSO, there is a private health insurance which people can choose to buy voluntary health insurance.

Nevertheless, men who have not got health insurance can access the public healthcare service for free. Some patients in primary health care at rural clinic and health clinic can no pay for medical fees. To concern with critical care in district hospital or higher level of medical treatment, it pays 1 RM for registration as outpatients and 5 RM for inpatients and no pay any more for medical fee. In case of underprivileged such as poor or old people, they exempt from those registration fee in according to Fees (Medical) Order 1982 and its amendment [PU (A) 359/1982]<sup>211</sup> which set small payment charges for patients in government health facilities<sup>212</sup>.

## **(2) Law concerning Medical treatment**

### **a. Law on healthcare professionals**

Healthcare professionals in Malaysia are required to be registered formally with the regulators to practice as follows<sup>213</sup>:

#### **a.1) Medical practitioners**

Medical practitioners intending to practice medicine in Malaysia are required to register with the Malaysian Medical Council (MMC), in accordance with the Medical Act 1971<sup>214</sup>. Only medical graduates from recognised institutions listed in Schedule 2 of the Medical Act 1971 are eligible for registration automatically. Graduates from unrecognised

the employees insured against the contingencies of invalidity and employment injury; and

(b) the contributions of the second category, being the contributions payable by or on behalf of employees insured only against the contingency of employment injury.

(3) The contributions of the various categories shall be paid at the rates specified in the Third Schedule.

(4) The contributions of the first category shall be shared by the employer and the employee in the ratio specified in Part I of the Third Schedule.

(5) The contributions of the second category shall be paid wholly by the employer.

<sup>210</sup> Sauwakon Ratanawijitrasin, Health system Reforms: Experience from ten countries, (Nonthaburi: Health System Research Institute, 2000), pp.56-57.

<sup>211</sup> It is a subordinate legislation imposed by virtue of Fee Act 1951.

<sup>212</sup> Safurah Jaafar, Kamaliah Mohd Noh, et al, Malaysia Health System Review, (World Health Organization Regional Office for the Western Pacific, 2013), p. 25.

<sup>213</sup> Malaysia Productivity Corporation, Reducing Unnecessary Regulatory Burdens on Business: Private Hospitals, March 2014, p.38.

<sup>214</sup> Malaysia Investment Development Authority, MALAYSIA: INVESTMENT IN THE SERVICE SECTOR Booklet 16: Medical and Healthcare Services, (Kuala Lumpur, 2012), p.3.

medical schools need to pass the medical qualifying examination to be eligible for the registration. Exemption, however, may be given to graduates from unrecognised schools with postgraduate degrees and having not less than three years of clinical experience<sup>215</sup>.

There are three types of registration allowed under the law:

### **(1) Registration as Provisionally Registered Medical Practitioners**

Under the Medical Act 1971 newly qualified medical graduates wishing to practice medicine are required to be provisionally registered before undergoing internship. Provisionally registered practitioners need to obtain experience for a period of 2 years in hospitals approved by the Medical Qualifying Board (MQB) in 5 out of 6 compulsory disciplines comprising Paediatrics, Medicine, Surgery, Orthopaedics, Obstetrics, Gynaecology and Emergency Medicine.

### **(2) Registration as Fully Registered Medical Practitioners**

Upon completion of internship and to the satisfaction of the MQB, practitioners who have been provisionally registered with the MMC as well as those who have been provisionally or fully registered with other Medical Councils (in other countries) can apply for full registration.

Under Section 14 of the Medical Act, 1971 there are two types of full registration:

#### **(2.1) Registration under Section 14 (1)**

Section 14 (1) of the Medical Act 1971 provides that only person who has been provisionally registered under Section 12 and obtain experience as stipulated in section 13, shall be entitled to be fully registered as a medical practitioner under this Act.

For Malaysian practitioners who have completed internship training locally, their respective employers must process and submit their application within one month of their completion. For Malaysian practitioners who completed internship overseas, the Evaluation Committee (EC) appointed by the MMC will determine whether they can be exempted from internship training in Malaysia, upon the application made by individual applicants.

#### **(2.2) Registration under Section 14 (3)**

Section 14 (3) in the Medical Act 1971 states that any person may be fully registered under this section subject to such restriction and conditions as may be stipulated by the Minister of Health, provided that the person seeking registration under this subsection possesses a qualification with respect to which the Minister, after consulting the Medical Council, is satisfied that it is adequate.

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<sup>215</sup> *Ibid.*

For non-citizens who wish to practice in Malaysia, registrations are approved for a limited period, place and scope of practice (study, employment or research). All applications are to be made through their employer and duly screened by the Evaluation Committee. Eligible applications will be forwarded to the Minister of Health for approval for registration under section 14 (3) of the Medical Act 1971.

Under the law, every fully registered practitioner must serve with the public services for a period of not less than two years. This is normally known as the ‘compulsory service’ before they are allowed to set up a private practice. Exemption may be considered for Malaysians with rare specialities, age above 45, willing to serve as lecturers (public/private institutions) or self-funding study.

However, medical practitioners who are registered with the MMC will be granted an Annual Practicing Certificate under Section 20 (2) of the Medical Act 1971<sup>216</sup>, to enable them to practice medicine in Malaysia. All applications must be submitted to the MMC before 1 December of the year prior to the year for which the application is submitted. The APC is valid until 31 December of the year.

### **(3) Temporary Registration under Section 16**

Temporary registration is only applicable to foreign medical practitioners who wish to practice in Malaysia. This type of registration is only approved for the purpose of postgraduate study or attachment training, demonstration during conferences or research with institutions, universities or even private hospitals. The registration is renewable on a three monthly basis.

To be eligible for temporary registration:

1. the practitioner must be registered with a foreign Medical Council;
2. the practitioner has insurance to cover his practice in Malaysia;
3. the local practitioner acting as a guarantor for the application holds a valid and current Annual Practicing Certificate issued by the MMC;
4. the practitioner applying for temporary registration need not possess a medical degree from recognised institutions listed in Schedule 2 of the Medical Act 1971.

Under the law, whilst holding temporary registration, practitioners are not allowed at all times to operate or even set up a private practice<sup>217</sup>.

#### **a.2) Dentist**

Dental practitioners intending to practice dentistry in Malaysia are required to register with the Malaysian Dental Council (MDC), in accordance with the Dental Act 1971.

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<sup>216</sup> Medical Act 1971

Section 20 (2) Upon such application and payment, the Registrar shall issue a certificate (to be styled “annual practising certificate”) authorizing the applicant to practise as a medical practitioner during the year for which the certificate is issued.

<sup>217</sup> Malaysia Investment Development Authority, *supra note 130*, p.3-5.

### (1) Registration as Dental Practitioners

Malaysian citizens and permanent residents may apply for registration with the Malaysian Dental Council, if they hold a recognized degree in dentistry. All practitioners who register with the MDC are required to undergo 2 years of compulsory service in the government sector<sup>218</sup>.

However, dental practitioners who are registered with the MDC will be granted an Annual Practicing Certificate under Section 19(2) of the Dental Act 1971<sup>219</sup>, to enable them to practice dentistry in Malaysia. All applications must be submitted to the MDC before 1 December of the year prior to the year for which the application is submitted. The APC is valid until 31 December of the year.

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<sup>218</sup> Dental Act 1971

Section 12 Persons entitled to be registered as dental surgeons

(1) Subject to the provisions of this Act and the regulations thereunder, a person shall be entitled to be registered as a dental surgeon upon application to the Registrar in the prescribed form if he holds any of the qualifications specified in the third column of the Second Schedule granted by an institution specified in relation to that qualification in the second column of that Schedule.

(2) The Minister may from time to time, after consulting the Council, add to, delete from or amend the Second Schedule by order published in the Gazette.

(3) Notwithstanding subsection (1) and subject to the other provisions of this Act and the regulations thereunder, any person who holds a qualification in dentistry (other than the qualifications specified in the Second Schedule to this Act) deemed suitable for registration by the Minister after consulting the Council (hereinafter referred to as an “approved qualification”), shall be entitled to be registered as a dental surgeon under this Act if he has obtained experience in the practice of dentistry by engaging in employment in the practice of dentistry to the satisfaction of the Director General for a period of not less than two years in such capacity in such one or more of the public services as may, from time to time, be determined by the Director General in his discretion, and has been granted a certificate by the Director General as evidence thereof.

(4) No person shall be eligible to engage in the employment mentioned in subsection (3) if—

(a) he has at any time been found guilty of an offence involving fraud, dishonesty or moral turpitude or an offence punishable with imprisonment (whether in itself only or in addition to or in lieu of a fine) for a term of two years or upward; or

(b) he has, after due inquiry by the Council, been found by it to have been guilty of infamous conduct in any professional respect or to be otherwise not of good fame and character, and upon such inquiry, the person against whom such conduct is alleged shall be entitled to appear before the Council and be heard personally or by advocate and solicitor.

<sup>219</sup> Dental Act 1971

Section 19(2) Upon such application and payment, the Council, if satisfied that the premises at, and the conditions under which the applicant practises dentistry are suitable for such practice, shall cause the Registrar to issue a certificate (to be styled “annual practising certificate”) authorizing the applicant to practise as a dental practitioner during the year for which the certificate is issued.

## **(2) Temporary Practicing Certificate**

Foreign dental specialists who wish to practice in Malaysia may apply for a TPC through their prospective employers. The application shall be in the form and manner as stated in the Guidelines for Application for Temporary Practising Certificate.

Criteria for granting a TPC as outlined in the Guidelines for Application for Temporary Practising Certificate include

1. possession of a recognized dental qualification as listed in Schedule II of the Dental Act 1971 ;
2. be credentialed by a Specialist Sub-Committee of the National Specialist Register;
3. possession of a recent Letter of Good Standing

Foreign dental specialists, who hold a TPC, are not allowed to set up their own dental practices, but they may be employed in institutions of higher education and private hospitals<sup>220</sup>.

### **a.3) Nurses**

Professional nurse who intend to practice nursing in Malaysia is required to register with the Nursing Board Malaysia in accordance with the Nurses Act 1950. The Nursing Board Malaysia is the regulatory authorities to register nurses as per statutory requirement. To practice nursing in Malaysia, one needs to have successfully undergone three (3) years formal basic nursing training as stipulated by the Nursing Board and sit the licensing examinations conducted by the Nursing Board.

#### **(1) Registration with Nursing Board Malaysia**

There are 5 types of nurses registered under the Nurses Act 1950:

##### **1. Registered Nurse**

‘Registered Nurse’ means a person who is admitted to the general part of the Register and who has undergone a 3-year Diploma in Nursing Programme at a recognized College of Nursing or University and passed the Nursing Board Examination set by the Nursing Board.

##### **2. Assistant Nurse**

‘Assistant Nurse’ means a person who is admitted to the supplementary part of the Nurses Act 1950 containing the title of assistant nurse and who has undergone a 2-year training Programme in a recognised School of Nursing and passed the Assistant Nurses Examination set by the Nursing Board.

##### **3. Mental Health Nurse**

‘Mental Health Nurse’ is a person who is admitted to the supplementary part of the Nurses Act 1950 and is described as a nurse trained in nursing and care of

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<sup>220</sup> Malaysia Investment Development Authority, MALAYSIA: INVESTMENT IN THE SERVICE SECTOR Booklet 16: Medical and Healthcare Services, (Kuala Lumpur, 2012), pp. 5-6.

persons suffering from mental health disorders, and who has undergone a 1-year training Programme in a recognised School of Nursing.

#### 4. Public Health Nurse

‘Public Health Nurse’ is a person registered under the supplementary part of the Nurses Act 1950 and has been trained in Public Health Nursing and who has undergone a 1-year training Programme in a recognised School of Nursing.

#### 5. Community Nurse

‘Community Nurse’ is a person registered under the supplementary part of the Nurses Act 1950 and who has undergone two and a half years training in a recognized Community Nurses College.

Every registered nurse who is fully registered must have a valid Annual Practicing Certificate (APC) to practice nursing in Malaysia. The APC expires on 31 December every year. APC needs to be renewed annually. All applications should be submitted to the Nursing Board Malaysia and Midwives Board Malaysia by 30 September each year.

### **(2) Temporary Practicing Certificate**

A Temporary Practicing Certificate (TPC) is issued to a foreign-trained nurse who is practicing nursing in Malaysia. TPC needs to be renewed annually. Foreign nurses need to fulfil the following requirements:

1. possess a Certificate equivalent to Sijil Pelajaran Malaysia;<sup>221</sup>
2. completed 3 full years of nursing training;
3. must have a minimum of 3 years of clinical working experience (age limit below 56 years);
4. Registered with their country’s Nursing Board or Ministry of Health;
5. nurse training must meet the minimum requirements of the current nursing curriculum of the Ministry of Health Malaysia<sup>222</sup>

#### **a.4) Midwives**

Midwives who intend to practice midwifery in Malaysia are required to register with the Midwives Board Malaysia respectively in accordance with the Midwives Act 1966. The Midwives Board Malaysia is the regulatory authorities to register midwives as per statutory requirement.

There are 4 types of midwives registered under the Midwives Act 1966:

##### 1. Division I

For registration in Division I, the Registered Nurse must have successfully undergone 12 months of midwifery training, including domiciliary training, and passed the examination conducted by the Board.

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<sup>221</sup> It is equivalent to the fifth year of Secondary school of Malaysia.

<sup>222</sup> Malaysia Investment Development Authority, MALAYSIA: INVESTMENT IN THE SERVICE SECTOR Booklet 16: Medical and Healthcare Services, (Kuala Lumpur, 2012), pp. 8-9.

## 2. Division II

For registration in Division II, the persons was authorized to practice midwifery in any State by reason that the name of such person which was contained in the Register of Midwives kept by the Chief Medical and Health Officer of the State before the commencement of this Act or the persons untrained in the practice of midwifery, who within 4 years of the commencement of this Act , satisfies the Registrar that such person has during the period of 2 years immediately preceding application for registration attended to women during childbirth.

## 3. Division III

For registration in Division III (Community Nurses), the persons must have successfully undergone 2 and a half years training which includes domiciliary training and passed the examination conducted by the Board.

## 4. Division IV

For registration in Division IV, the persons attended to women in childbirth according to purely Malay, Chinese, Indian or other native methods under the supervision of any person registered under Part I, II or III of the Register, and is a fit and proper person to practice as midwives, within 10 years of the commencement of section 11 (4), satisfies the Registrar that he or she has, during the period of 2 years immediately preceding application for registration.

Currently the Midwives Board Malaysia only admits Midwives Division I and III<sup>223</sup>.

### a.5) Pharmacists

Pharmacy graduates intending to practice pharmacy in Malaysia are required to register with the Pharmacy Board of Malaysia (PBM), in accordance with the Registration of Pharmacists Act 1951 and the Registration of Pharmacists (Amendment) Act 2003. Only Malaysians and a few categories of foreigners can register with PBM.

There are 3 types of registration with PBM:

#### (1) Registration as provisionally registered pharmacist

Under Section 6 of Pharmacists Act 1951 and Registration of Pharmacists (Amendment) Act<sup>224</sup> a pharmacy graduate must register as a provisionally registered

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<sup>223</sup> *Ibid.*

<sup>224</sup> Registration of Pharmacists Act 1951 and Registration of Pharmacists (Amendment) Act 2003.  
Section 6 Persons entitled to provisional registration

(1) Subject to the other provisions of this Act, a person shall be entitled to be provisionally registered as a pharmacist, solely for the purpose of obtaining the experience specified in section 6A, upon application to the Registrar in the prescribed form if he holds -

(a) any of the qualifications specified in the First Schedule; or

(b) a qualification in pharmacy, other than the qualifications referred to in paragraph (a), deemed



pharmacist and obtain experience for a period of not less than 1 year to the satisfaction of PBM before the pharmacist can be registered as a fully registered pharmacist in Malaysia. At the same time, he/she needs to apply to the Public Services Commission (PSC) for employment in the Government sector or other public services.<sup>225</sup>

## **(2) Registration as fully registered pharmacist**

Pharmacy graduates can apply for full registration as a pharmacist upon the completion of the provisional registration period. With the implementation of compulsory service, they will have to serve the Government for not less than 3 years on obtaining full registration.

Categories of pharmacists who are exempted from compulsory service are as follows :

1. pharmacists who hold a basic pharmacy qualification recognised by PBM and have a PhD in pharmacy ; or
2. pharmacists who hold a basic pharmacy qualification recognised by PBM and have a qualification recognised by the Board of Pharmaceutical Specialities (BPS), United States of America.

Pharmacists who are exempted from compulsory service with the Government can apply to PBM for full registration and at the same time apply to the Pharmaceutical Services Division , Ministry of Health for exemption from compulsory service with justification.

## **(3) Temporary registration**

Temporary Registration (TR) can be issued to non-Malaysians (foreigners) of the following categories<sup>226</sup>:

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suitable for registration by the Minister after consulting the Board.

(2) Any person provisionally registered under paragraph (1)(b) may be subject to such restrictions and conditions as may be imposed by the Minister on the advice of the Board, and where restrictions and conditions are so imposed the registration of that person shall have effect subject to such restrictions and conditions.

<sup>225</sup> Malaysia Investment Development Authority, MALAYSIA : INVESTMENT IN THE SERVICE SECTOR Booklet 16 : Medical and Healthcare Services, (Kuala Lumpur, 2012), p.3.

<sup>226</sup> Registration of Pharmacists Act 1951 and Registration of Pharmacists (Amendment) Act 2003.

### **Section 11 A Temporary registration**

(1) Notwithstanding anything to the contrary contained in this Act, the Board may, upon application in writing, temporarily register, subject to such conditions and restrictions as the Board deems fit to impose, a person who is registered as a pharmacist outside Malaysia.

(2) The Board shall issue to a person temporarily registered under subsection (1) a temporary registration certificate.

1. spouses of Malaysians who possess pharmacy qualifications recognised by PBM and are registered as pharmacists in countries which are recognised by PBM;
2. spouses of foreigners who are in Malaysia with a working permit who possess pharmacy qualifications recognised by PBM and are registered as pharmacists in countries which are recognised by PBM;
3. foreigners who hold a PhD or post graduate Doctor of Pharmacy with basic pharmacy qualifications recognised by PBM and are registered in their countries for 3 years.

However, a holder of Doctor of Pharmacy (PharmD) from universities in the United States of America is not recognised by PBM as PhD or Doctor of Pharmacy. He/she needs to provide a letter of appointment from his/her employer in Malaysia<sup>227</sup>.

#### **a.6) Medical assistants**

Medical assistants intending to provide service in Malaysia are required to register with the Medical Assistant (Registration) Board, in accordance with the Medical Assistants (Registration) Act 1977.

To provide medical assistance service in Malaysia, one needs to have successfully undergone three and half year Diploma in Medical Assistant (DMA) undergraduate program recognized by the Malaysian Qualifications Agency and passes the prescribed examinations and successfully completes a prescribed course of training in any of the government hospital, government health centre or other government institution for the care, treatment or rehabilitation of patients as may be approved by the Board for that purpose or in a training centre or satisfies the Board that he has at the commencement of this Act passed any examination sufficient in the opinion of the Board to qualify him to be registered under this Act<sup>228</sup>.

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<sup>227</sup> Malaysia Investment Development Authority, MALAYSIA : INVESTMENT IN THE SERVICE SECTOR Booklet 16: Medical and Healthcare Services, (Kuala Lumpur, 2012), p. 6-7.

<sup>228</sup> Medical Assistants (Registration) Act 1977

Section 9 Persons entitled to be registered

(1) Any person who—

(a) passes the prescribed examinations and successfully completes a prescribed course of training in any of the institutions specified in paragraph 7(1)(a) as may be approved by the Board for that purpose or in a training centre; or

(b) satisfies the Board that he has at the commencement of this Act passed any examination sufficient in the opinion of the Board to qualify him to be registered under this Act

#### **a.7) Opticians & optometrists**

Opticians & Optometrists intending to provide services in Malaysia are required to register with the Malaysian Optical Council, in accordance with the Optical Act 1991.

There are two types of registration under Optical Act 1991:

##### **(1) Registration as opticians**

Section 18 (1) of this Act entitles any person to be registered as an optician if he satisfies the Council that he is not less than 18 years of age, is a fit and proper person to be registered as an optician and is qualified with the optometry as specified in the First Schedule of this Act such as holding the Diploma in Optometry from Shri Vaishnav Polytechnic (India), Doctor of Optometry from Central College of Philippines.

However, one who does not hold those qualifications may register as an optician to the Optical Council under Section 18 (2) if he satisfies the Council that he is not less than 18 years of age and was engaged in the practice of prescribing and dispensing ophthalmic lenses for a period of not less than 1 year immediately prior to the coming into force of this Act or holds a qualification which is deemed suitable, after consulting the Optical Council, by the Minister of Health.

##### **(2) Registration as optometrists**

Section 19 (1) of this Act entitles any person to be registered as an optometrist if he satisfies the Council that he is not less than 18 years of age, is a fit and proper person to be registered as an optometrist and is qualified with the optometrists as specified in the Second Schedule of this Act such as holding the Doctor of Optometry from University of Waterloo (Canada), Diploma in Optometry from Institute of Medical and Health Care (Hong Kong).

However, one who does not hold those qualifications may register as an optician to the Optical Council under Section 19 (2) if he satisfies the Optical Council that he is not less than 18 years of age, is a fit and proper person to be registered as an optometrist and holds a qualification which is deemed suitable, after consulting the Optical Council, by the Minister of Health

#### **b. Law on healthcare facilities**

The government healthcare facilities offer a comprehensive range of services, including health promotion, disease prevention, curative and rehabilitative care delivered through clinics and hospitals, while special institutions provide long-term care. In addition, several other government ministries provide health-related services. Whereas, the private health sector provides health services, mainly in urban areas, through physician clinics and

private hospitals with a focus on curative care. Private companies run diagnostic laboratories and some ambulance services<sup>229</sup>.

In regard to the law on healthcare in Malaysia, the government has concerns with private healthcare in aspects of accessibility, equity and quality care<sup>230</sup>. The Private Healthcare Facilities and Services Act 1998 was then enacted in order to regulate the governance of private healthcare facilities.

The Private Healthcare Facilities and Services Act 1998 provides the regulatory control through licensing of the healthcare facilities in each type of facilities as follows:

### **1. Private hospital or healthcare centre**

Section 3 of this Act provides that *no person shall establish or maintain any of the following private healthcare facilities or services without approval being granted under paragraph 12(a) or operate or provide any of such facilities or services without a licence granted under paragraph 19(a):*

- (a) a private hospital;*
- (b) a private psychiatric hospital;*
- (c) a private ambulatory care centre;*
- (d) a private nursing home;*
- (e) a private psychiatric nursing home;*
- (f) a private maternity home;*
- (g) a private blood bank;*
- (h) a private haemodialysis centre;*
- (i) a private hospice;*
- (j) a private community mental health centre;*
- (k) any other private healthcare facility or service or healthrelated service as the Minister may specify, from time to time, by notification in the Gazette; and*
- (l) a private healthcare premises incorporating any two or more of the facilities or services in paragraphs (a) to (k)*

The two main institutions involved in regulating private hospitals are the Ministry of Health (MOH) and the local authorities. Regulatory control is achieved through licensing. In establishing a private hospital, there is the need to construct the building and approval planning is necessary from the local authority and to receive the issuance of *certificate of completion and compliance*. However, the Private Healthcare Facilities and Services Act 1998 also empowered MOH in planning approval for the pertinent requirements of a private hospital. This is explicitly stated in Section 9 of the Act<sup>231</sup> which states that in deciding

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<sup>229</sup> Malaysia Productivity Corporation, Reducing Unnecessary Regulatory Burdens on Business: Private Hospitals, March 2014, p. 15.

<sup>230</sup> *Ibid*, p.40.

<sup>231</sup> Private Healthcare Facilities and Services Act 1998

whether or not to grant approval to establish or maintain a private healthcare facility or service other than a private medical clinic or a private dental clinic, the Director General shall consider the following matters:

- (a) the nature of the healthcare facility or service to be provided;
- (b) the extent to which the healthcare facilities or services are already available in an area;
- (c) the need for the healthcare facility or service in an area;
- (d) the future need for the healthcare facility or service in an area; or
- (e) any other matter which in Ministry of Health's opinion is relevant.

Once the planning approval is obtained, the licensee has to complete the building and then apply for the operating license from MOH within 3 years as is explicitly state in Section 14 of the Act<sup>232</sup>. To qualify for the operating licensing the hospital has to meet all the regulatory requirements prescribed in the *Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 [P.U. (A) 138/2006]*. Within these regulations, there is also the 'license for installation and usage of radiation equipment' issued by the Radiation Safety Unit of the MOH<sup>233</sup>.

## 2. Private medical clinic and dental clinic

To establish private medical clinics and dental clinics, there are different processes from those of private hospitals because there is no need to obtain a construction

Section 9 Matters to be considered before approval to establish or maintain is granted

In deciding whether or not to grant approval to establish or maintain a private healthcare facility or service other than a private medical clinic or a private dental clinic, the Director General shall consider the following matters:

- (a) the nature of the healthcare facility or service to be provided;
- (b) the extent to which the healthcare facilities or services are already available in an area;
- (c) the need for the healthcare facility or service in an area;
- (d) the future need for the healthcare facility or service in an area; or
- (e) any other matter which in his opinion is relevant.

<sup>232</sup> Private Healthcare Facilities and Services Act 1998

Section 14 Application for a licence to operate or provide to be made within three years

(1) An application for a licence to operate or provide a private healthcare facility or service other than a private medical clinic or private dental clinic shall be made within three years from the date of the issuance of the approval to establish or maintain in respect of such facility or service.

(2) If a licence to operate or provide a private healthcare facility or service is not applied for within the time specified in subsection (1), the approval to establish or maintain granted under paragraph 12(a) shall be deemed to have been revoked unless an extension of that time is granted by the Director General.

<sup>233</sup> Malaysia Productivity Corporation, Reducing Unnecessary Regulatory Burdens on Business: Private Hospitals, March 2014, p. 39-40.

planning approval from the local authority prior to apply for the operating license from MOH, but applicants can do immediately apply for that license. When they receive the clinic operating licenses, they can construct and provide healthcare service in their clinics.

Besides the registration control, this Act also regulates the following aspects;

(1) quality of healthcare facilities and services: it provides every healthcare facility or service shall have programmes and activities to ensure the quality and appropriateness of healthcare facilities and services provided.

(2) management: this Act provides the licensee of a private hospital, private maternity home, private ambulatory care centre, private hospice, private psychiatric hospital shall establish a Board of Management and an Advisory Committee.

(3) managed care Organisation: the Act provides the licensee of a private healthcare facility or service or the holder of a certificate of registration shall not enter into a contract or make any arrangement with any managed care organization that results in a change in the powers of the registered medical practitioner or dental practitioner or a change in the role and responsibility of the Medical or Dental Advisory Committee<sup>234</sup>.

### **c. Law on infectious diseases**

Malaysian government has set the measures for control and monitor infectious diseases in accordance with the Prevention and Control of Infectious Diseases Act 1988 which comprises two significant parts; Prevention of importation of infectious disease measures and Control of the spread of infectious disease measures.

#### **1. Prevention of importation of infectious disease measures**

In order to curb the infectious diseases, defensive measures is important to control any diseases not to spread in country. In this Act provides those of measures as follows:

##### **1.1 Declaration of infected area**

Section 6 of the Act<sup>235</sup> states that whenever notification is received under the International Health Regulations that an infected area exists outside Malaysia, the Minister may by order in the Gazette declare such area to be an infected area for the purposes of

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<sup>234</sup> Arthorn Riewpaiboon, Research on Health service system reform in Malaysia presented to Health Systems Research Institute, October 2000, p.47.

<sup>235</sup> Prevention and Control of Infectious Diseases Act 1988

Section 6 Declaration of infected area

(1) Whenever notification is received under the International Health Regulations that an infected area exists outside Malaysia, the Minister may by order in the Gazette declare such area to be an infected area for the purposes of this Act.

(2) Notwithstanding the provisions of subsection (1), the Minister may, by order in the Gazette, declare any other area outside Malaysia to be an infected area.

(3) The Minister may, by regulations made under this Act, prescribe the measures to be taken to prevent the introduction of any infectious disease into Malaysia from an infected area.

infectious diseases control. Nonetheless, the Minister of Health may, by order in the Gazette, declare any other area outside Malaysia to be an infected area without such notification. In addition, the Minister may, by regulations made under this Act, prescribe the measures to be taken to prevent the introduction of any infectious disease into Malaysia from an infected area.

### 1.2 Examination of any vehicle or person or article

The Act provides about the officer's power to examine the vehicle in order to prevent the infectious disease as stated under Section 7 as follow; the authorized officer<sup>236</sup> has authority to enter into and medically examine any vehicle at any time upon its arrival in Malaysia ; authority to examine any person, animal or article on board such vehicle; and authority to take such samples as may be necessary for the purpose of determining the sanitary condition of such vehicle or article or the state of health of such person or animal.

Furthermore, an authorized officer may order any part of any vehicle, which he has reason to believe to be contaminated or infested, to be disinfected, disinfected or rerated to that officer's satisfaction.

After the course of a medical examination has been done, if an authorized officer finds or has reason to believe that any person is infected or is a contact, he may order such person to be removed to a quarantine station and detained therein for isolation or observation; or to be put under surveillance until such time as the disease is no longer communicable to others

### 1.3 Prohibition of human remains and pathogenic organism or substance importation or exportationl

The Act gives the regulation, under Section 9 (1), by prohibiting anyone from importing into or exporting out of Malaysia (a) any human remains, human tissues or part thereof; or (b) any pathogenic organism or substance or part thereof, except in accordance with regulations made under this Act. Any person who contravenes the regulation above would be deemed to have committed an offence.

## 2. Control of the spread of infectious disease

Besides defensive measures, this Act also provides passive measures to control of the spread of infectious disease as follows:

### 2.1 Duty to notify infectious disease

The Act gives regulation on the duty of the person who perceive any information on infectious disease to inform the officer with the details as stated under Section 10 as follows:

(1) every adult occupant of any house in which any infectious disease appears, and every person in charge of, or in the company of, and every person not being a medical

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<sup>236</sup> It means any Medical Officer of Health, any health inspector, or any officer appointed by the Minister of Health

practitioner attending on, any person suffering from or who has died of an infectious disease shall, upon becoming aware of the existence of such disease, with the least practicable delay notify the officer in charge of the nearest district health office or government health facility or police station or notify the nearest village head of the existence of such disease;

(2) every medical practitioner who treats or becomes aware of the existence of any infectious disease in any premises shall, with the least practicable delay, give notice of the existence of the infectious disease to the nearest Medical Officer of Health in the form prescribed by regulations made under this Act;

(3) the person in charge of any boarding-house shall, with the least practicable delay, notify the officer in charge of the nearest district health office or government health facility or police station if he knows or has reason to believe that any person in the boardinghouse is suffering from or has died of an infectious disease;

(4) any police officer or village head receiving notification under this section shall, with the least practicable delay, notify the officer in charge of the nearest district health office or government health facility.

Any person who contravenes the above regulatory duty would be deemed to have committed an offence.

## 2.2 Declaration of an infected local area

Section 11 (1) of the Act provides that if the Minister of Health is satisfied that there is an outbreak of an infectious disease in any area in Malaysia, or that any area is threatened with an epidemic of any infectious disease, he may, by order in the Gazette, declare such area to be an infected local area.

## 2.3 Duty of Infected persons not to act in a manner likely to spread infectious disease

The Act gives regulation on such duty as stated under Section 12 with the details as follows:

(1) no person who knows or has reason to believe that he is suffering from an infectious disease shall expose other persons to the risk of infection by his presence or conduct in any public place or any other place used in common by persons other than the members of his own family or household.

(2) no person who knows or has reason to believe that he is suffering from any infectious disease specified in Part II of the First Schedule shall do any act which he knows or has reason to believe is likely to lead to the spread of such infectious disease

Any person who contravenes such regulation would be deemed to have committed an offence.

## 2.4 Isolation of infected persons and suspects

Section 14 of the Act provides that an authorized officer may cause any person who is infected or whom he has reason to believe to be infected to be removed to a



quarantine station for treatment and may detain the person at the station until he can be discharged without danger to the public.

#### 2.5 Observation or surveillance of contacts

Section 15 (1) of the Act provides that an authorized officer may order any contact to undergo observation in such place and for such period as he may think fit, or to undergo surveillance until he may be discharged without danger to the public.

#### 2.6 Disposal of the dead

Section 17 of the Act provides that where a person has died or is suspected to have died of an infectious disease; and an authorized officer has given directions as to the manner in which the corpse of such person is to be buried or cremated, no person shall bury or cremate such corpse otherwise than in accordance with the directions of the authorized officer. Any person who contravenes such regulation would be deemed to have committed an offence.

### 3.3.2.2 Consumer law

#### (1) Law concerning control of alcohol drinking and tobacco

##### a. Alcohol drinking control Laws

According to Malaysia's Sharia Law, all Malaysian Muslims are forbidden from drinking alcohol. Thus, it is also illegal to sell liquor to a Muslim as section 19 of the Syariah Criminal offences (Federal Territories) Act 1997 expressly provide that Any person who in any shop or other public place, consumes any intoxicating drink or makes, sells, offers or exhibits for sale, keeps or buys any intoxicating drink shall be guilty of an offence<sup>237</sup>.

However, that section does not prohibit non-Muslims to drink alcohol, but it set the minimum age for consuming alcohol at 18<sup>238</sup>. In order to serve any type of liquor or alcohol in Malaysia, non-Muslim vendors wholesalers and retailers need a license to sell liquor from Licensing Board in accordance with Part VII of Excise Act 1967 (Licensing). There are four types of license under the Excise Act 1967:

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<sup>237</sup> Syariah Criminal offences (Federal Territories) Act 1997

Section 19 Intoxicating drinks

(1) Any person who in any shop or other public place, consumes any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any person who makes, sells, offers or exhibits for sale, keeps or buys any intoxicating drink shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

<sup>238</sup> David H Jernigan, Saroja K Indran, Alcohol and Public Health in 8 Developing countries, (World Health organization, 1999), p.70.

1. Public house licenses

These licenses are issued for the sale by retail of intoxicating liquors, excluding toddy, for consumption on the premises or at the place where they are sold.

2. Beer house licenses

These licenses are issued for the sale by retail of beer for consumption on the premises or at the place where it is sold: provided that the holders of public house licences are exempted from beer house licences.

3. Retail shop licences

These licenses are issued for the sale by retail of intoxicating liquors, excluding toddy, for consumption elsewhere than on the premises or at the place where they are sold.

4. Wholesale dealer's licences

These licenses are issued for the sale by whole-sale of intoxicating liquors, excluding toddy.

## **b. Tobacco control laws**

Malaysia became a Party to the World Health Organization Framework Convention on Tobacco Control (WTO FCTC) in 2005. However, tobacco control is regulated under the Food Act of 1983.

The Control of Tobacco Product Regulations 2004 were issued under the Food Act of 1983 and regulate, among other things, smoke free environments; tobacco advertising, promotion and sponsorship; and tobacco packaging and labeling. The 2004 Regulations have been amended several times, including Control of Tobacco Product (Amendment) Regulations 2013. In addition, two notices - Declaration of Non-Smoking Area 2011 and Declaration of Non-Smoking Area 2012 - have been issued by the Minister of Health declaring specified additional buildings and places as smoke free.

Smoking is generally prohibited on public transportation, except in air-conditioned areas of trains and ships where food is served. Furthermore, it is prohibited in specified public places and workplaces listed in the regulations including, among others, in workplaces with a centralized air-conditioning system; health, education, government and cultural facilities; and indoor stadiums. With respect to banks, financial institutions, National Telecom Company, National Energy Company, and post offices, it is prohibited on floors with a service counter. However, Smoking is not forbidden in pubs, discotheques, nightclubs, casinos, in designated smoking areas in air-conditioned eating places and also allowed in non-air-conditioned public transport terminals.

In addition, all forms of advertisement and the promotion for tobacco are prohibited. However, due to the lack of definition of "tobacco promotion" in the law, some forms of

tobacco promotion may not be covered under the ban; for example, the promotion on TV or radio or the promotion on the internet communications.<sup>239</sup> Nevertheless, the financial sponsorship is not prohibited if such sponsors do not take it to advertise for the purpose of tobacco promotion.

Moreover, The Government also controls tobacco packaging and labeling. Rotating combined picture and text health warnings are required to occupy 50 percent of the front and 60 percent of the back of the package. The text of the warning is in Malay on the front panel and English on the back panel. The component and the emission substance of the tobacco is required to be shown on the package. Any advertising description and any other information on the package of the tobacco or cigarette that claim to have lesser danger than other trade mark is prohibited.<sup>240</sup>

## **(2) Law concerning food, drug, and medical device**

### **a. Food law**

There is a significant Malaysian law on food which named 'Food Act 1983'. The objective of that Act is to protect the public against health hazards and fraud in the preparation, sale and use of food<sup>241</sup>. Under this Act, the preventive measures on the preparation, sale and use of food is regulated. In order to comprehend clearly in those measures, the definition of 'food' is needed to be initialed.

#### **1. Definition of 'Food'**

Section 2 of the Food Act 1983 provides that "food" includes every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, preservation, of any food or drink and includes confectionery, chewing substances and any ingredient of such food, drink, confectionery or chewing substances.

#### **2. Prevention measures for food safety**

##### **2.1 Power to take sample**

Section 5 (2) of the Act provides that an authorized officer<sup>242</sup> may at any place demand and select and take or obtain samples for the purpose of analysis without payment from any manufacturer making food for sale or from any importer of any food or

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<sup>239</sup> The International Legal Consortium, Tobacco Control Policy Fact Sheet <<http://www.tobaccocontrollaws.org/legislation/factsheet/aps/malaysia>>, (accessed December 7, 2016)

<sup>240</sup> The International Legal Consortium, <[www.tobaccocontrollaws.org/legislation/country/malaysia/laws](http://www.tobaccocontrollaws.org/legislation/country/malaysia/laws)> (accessed November 7, 2016).

<sup>241</sup> Rahmah ISMAIL, Food and Consumer Protection: A Study on Food Legislation of Selected countries, Asian Law institute, National University of Singapore, 2011, p.2.

<sup>242</sup> It means any medical officer of health or any health inspector of the Ministry of Health or of any local authority, or any suitably qualified person, appointed by the Minister to be an authorized officer

from his agent or servant. If any person refuses or neglects to comply with any demand or requisition made by an authorized officer in pursuance of this section, he commits an offence.

## 2.2 Power to call for information

Section 8 (1) of this Act provides that if any authorized officer is of the opinion that there is reasonable ground for suspecting that any person is in possession of any food or other substance or any appliance for the purpose of or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food in breach of any of the provisions of this Act or any regulations made thereunder he may require such person to produce for his inspection any books, documents or other records or any other information relating to the importation, preparation, reception, possession, purchase, sale or delivery of such food or other substance or any appliance.

## 2.3 Power to obtain particulars of certain food ingredients

Section 9 (1) of this Act provides that the Director General may after obtaining an approval in writing from the Minister direct any person who at the date of the direction or at any subsequent time carries on a business which includes the production, importation or use of any substance to which this Act applies to furnish to him, within such time as may be specified in such direction, such particulars as may be specified, of the composition and use of any such substance sold or for sale in the course of that business or used in the preparation of food.

## 2.4 Power to order food premises or appliances to be put into hygienic and sanitary condition

Section 10 of the Act provides that, where the Director<sup>243</sup> or an officer authorized by him in this particular respect is satisfied, by his own inspection or the report of an authorized officer, that any food premises, or any appliances used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, is in a condition that fails to comply with any hygiene and sanitary requirements specified in regulations made under this Act, he may, by instrument in writing served on the proprietor, owner or occupier of such premises, or the proprietor or owner of such appliance, order that the premises or appliance be put into a hygienic and sanitary condition to the satisfaction of an authorized officer within a period specified in the instrument.

## 2.5 Power to order the closure of insanitary premises

Section 11 of this Act provides that the Director or an officer authorized by him in this particular respect may in writing order the closure forthwith not exceeding fourteen days of any premises preparing or selling food where the Director or the officer

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<sup>243</sup> This Act empowers of Director to perform certain tasks which are not authority of Director General such as power to order under this section or power to order the closure of insanitary premises in section 11

authorized by him in this particular respect is of the opinion that such premises is in a condition that fails to comply with the sanitary and hygienic requirements and such that it is likely to be hazardous to health<sup>244</sup>.

## 2.6 Providing criminal offences related to food preparation or sale

The Food Act 1983 deals with the offenses related to food and provides for criminal penalties for any person who contravene them in many cases such as

- Food containing substances injurious to health Offence (section 13)
- Food unfit for human consumption Offence (section 13 A)
- Adulterated food Offence (section 13 B)
- False labelling Offence (section 15-16)
- Deceptive Advertisement Offence (section 17)

## 3. Control of food Importation's standard

Section 29 of the Food Act 1983 provides that the importation of any food which does not comply with the provisions of this Act or any regulation made thereunder is prohibited. The Act sets the rules on food importation as follows:

3.1 Processed food in a finished form importation may be imported into Malaysia for the purpose of relabelling it so that it complies with the provisions of this Act relating to labelling.

3.2 Raw or semi-processed food importation may be imported into Malaysia for the purpose of reprocessing or reconditioning it so that it complies with the provisions of this Act.

Where such food is imported into Malaysia for the purposes of relabelling, reprocessing or reconditioning it and the food is not relabelled, reprocessed or reconditioned within three months of the importation, the food shall be exported by the importer within a period of two months or such other period as the Minister oh Health may determine and, where it is not so exported within such periods, it shall be forfeited and disposed of as the Minister may direct. Nevertheless, the Director may require the importer to relabel, reprocess or recondition the food in a designated area under the supervision of

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<sup>244</sup> Food Act 1983

### Section 11 Closure of insanitary premises

The Director or an officer authorized by him in this particular respect may in writing order the closure forthwith not exceeding fourteen days of any premises preparing or selling food where the Director or the officer authorized by him in this particular respect is of the opinion that such premises is in a condition that fails to comply with the sanitary and hygienic requirements and such that it is likely to be hazardous to health, and the proprietor, owner or occupier of the premises who fails to comply with the order commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

an authorized officer to ensure that the relabeling, reprocessing or reconditioning of the food comply with the provisions of this Act.

However, the Minister of Health may exempt any food or class of food from the provisions of this section.

Besides the Food Act 1983, there are many pieces of subsidiary legislation which deal with food such as the Food Regulation 1985 contains provisions regarding procedures for taking samples, labelling, food additives and nutrient supplement, food packaging, incidental constituent, food standard and particular labelling requirements for food or Food Hygiene Regulation 2009 regulate sanitary measures for the food handler and food premises.

## **b. Pharmaceutical laws**

The pharmaceutical industry in Malaysia is under the purview of the Ministry of Health of Malaysia. In Malaysia, various laws have been enacted and various governing bodies have been established to govern and oversee the pharmaceutical industry in Malaysia for the purpose of protecting the end-users. The important relevant laws which govern the pharmaceutical industry in Malaysia<sup>245</sup>:

### **b.1) Sales of Drug Act 1952**

The objective of this Act is to regulate the sale of drugs in Malaysia. The Act deals with power of officers to inspect any drug intended for sale or as follows:

1. Power to demand, select, and take samples of any drug

Section 5 of this Act provides that, on payment or tender to any person selling or making any drug, or to his agent or servant, of the current market value of the samples in this section referred to, any officer<sup>246</sup> or inspector<sup>247</sup> may at any place demand and select and take or obtain samples of the said drug for the purpose of analysis. Furthermore, any such officer or inspector may require the said person or his agent or servant to show and permit the inspection of the package in which such drug is at the time kept and to take therefrom the samples demanded.

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<sup>245</sup> AZMI & ASSOCIATES , A GENERAL INTRODUCTION ON PHARMACEUTICAL LAWS IN MALAYSIA, <[http://www.azmilaw.com/images/stories/PDF/Articles/A\\_General\\_Introduction\\_to\\_Pharmaceutical\\_Laws\\_in\\_Malaysia.pdf](http://www.azmilaw.com/images/stories/PDF/Articles/A_General_Introduction_to_Pharmaceutical_Laws_in_Malaysia.pdf)>, pp.1-2.

<sup>246</sup> Section 2 of Sales of Drug Act 1952

“officer” means any Medical Officer of Health of the Medical Department of the Federal Government or of any State Government or of the Health Department of any Municipality, and includes the Director General of Chemistry, Malaysia, all Senior Chemists and Chemists of the Department of Chemistry and any person appointed to be an officer under section 3 of this Act.

<sup>247</sup> Section 2 of Sales of Drug Act 1952

“inspector” means any person appointed to be an inspector under section 3 of this Act;

## 2. Power to call for information

Section 9 (1) states that if in the opinion of any officer appointed under section 3 there is reasonable ground for suspecting that any person is in possession of any drug or other substance for the purpose of sale or of manufacturing or preparing the same for sale in breach of this Act he may require such person to produce for his inspection any books or documents dealing with reception, possession, purchase, sale or delivery of any such drug or other substance.

## 3. Providing criminal offences related to sale of drug

Section 10 (1) of the Act states that any person commits an offence who sells—

(a) any adulterated drug without fully informing the purchaser at the time of the sale of the nature of the adulteration;

(b) any drug in any package which bears or has attached thereto any false or misleading statement, word, brand, label or mark purporting to indicate the nature, quality, strength, purity, composition, weight, origin, age or proportion of the article contained in the package or of any ingredient thereof;

(c) any drug containing any substance the addition of which is prohibited;

(d) any drug containing a greater proportion of any substance than is permitted;

(e) any drug for internal use which contains methyl alcohol, isopropyl alcohol or denatured alcohol; or

(f) to the prejudice of the purchaser any drug which is not of the nature or not of the substance or not of the quality of the drug demanded by the purchaser.

## 4. Forfeiture of drugs upon conviction

Section 13 provides that in the case of any conviction under this Act the court shall order that any drug to which the conviction relates and any similar drug found on the defendant's premises or in his possession at the time of the commission of the offence, together with all packages vessels containing the same, shall be forfeited and shall be disposed of in such manner as the Chief Minister may direct.

## **b.2) Medicines (Advertisement and Sales) Act 1956**

The objective of this Act is to control advertisements relating to medical matters and to regulate the sale of substances recommended as a medicine.

### 1. Definition of 'advertisement'

In order to understand the technical term, Section 2 of the Act provides that "advertisement" includes any notice, circular, report, commentary, pamphlet, label, wrapper or other document, and any announcement made orally or by any means of producing or transmitting light or sound.

## 2. Medicines advertisement control measures

Section 4 B<sup>248</sup> of this Act provides that no person shall take any part in the publication of any advertisement unless such advertisement has been approved by the Medicine Advertisements Board. Any advertisement proposed to be published, no matter what it is the direct advertisement or advertisement referring to any article<sup>249</sup>, may be submitted to the Medicine Advertisements Board for approval in the manner provided for by regulations made under section 7<sup>250</sup>. In such section shows the power of Ministry of Health to make regulations for providing the manner of submitting advertisements for approval under section 4A and section 4B and the manner of appeal against the decision of the Medicine Advertisements Board and that such appeal shall lie to the Minister.

Besides the registration regulation, this act also deals with prohibition of some characteristics of drug advertisement as follow;

- Prohibition of a medicine or an appliance or a remedy advertisements relating to prevention or treatment of the diseases and conditions of human beings as specified in the Schedule<sup>251</sup> or practicing contraception among human beings; improving the condition or functioning of the human kidney or heart; improving the sexual function or

<sup>248</sup> Medicines (Advertisement and Sales) Act 1956

Section 4B Advertisements of medicines to be approved

(1) No person shall take any part in the publication of any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article of that description as a medicine, an appliance or a remedy for the purpose of treatment or prevention of diseases or conditions of human beings other than the diseases and conditions specified in subsection 3(1), unless such advertisement has been approved by the Medicine Advertisements Board.

(2) Any advertisement proposed to be published may be submitted to the Medicine Advertisements Board for approval in the manner provided for by regulations made under section 7.

<sup>249</sup> Pisarn Limsatit and Chantana Morkjarernpong, Final report : Study of laws and measures of promotion of drug sales to medial practitioner in Australia, Canada and Malaysia presented to Drug system Monitoring and Development programme, Faculty of Pharmaceutical Sciences, Chulalongkorn University, 2010, pp.71-72.

<sup>250</sup> Medicines (Advertisement and Sales) Act 1956

Section 7 Regulations

The Minister may make regulations for carrying out the purpose of this Act but without prejudice to the generality of the foregoing words such regulations may—

- (a) for the purpose of section 4A and section 4B, establish the Medicine Advertisements Board;
- (b) provide the manner of submitting advertisements for approval under section 4A and section 4B and impose fees for submission and approval of such advertisements;
- (c) provide the procedure to be followed by the Medicine Advertisements Board; and
- (d) provide the manner of appeal against the decision of the Medicine Advertisements Board and that such appeal shall lie to the Minister.

<sup>251</sup> Take diseases of the kidney, diseases of the heart or diabetes for examples.



sexual performance of human beings or diagnosis of a disease as specified in the Schedule. (section 3)

- prohibition of advertisements relating to abortion (section 4)
- prohibition of advertisement relating to any skill or service relating to the treatment, prevention or diagnosis of any ailment, disease, injury, infirmity or condition affecting the human body unless any advertisement published with the approval of the Minister of Health, by any professional body related to the medical profession or to any other allied profession which is established by or registered under any written law; or with the approval of the Medicine Advertisements Board, by any private hospital or by any private clinic; private radiological clinic or private medical laboratory. (section 4 A)

If any person contravenes any of the provisions of sections 3, 4, 4A and 4B, he shall, subject to the provisions of this Act, be liable on summary conviction.

### **c. Medical Device Laws**

Malaysia has set the Medical device regulatory system in order to assess safety and performance of medical devices, identify and monitor medical devices in the market and to facilitate medical device trade and industry from local manufacturers to enter global market<sup>252</sup>. In that system, the government regulates through 2 Act as follows:

#### **c.1) Medical Device Act 2012**

This Act focuses on monitoring all products that meet the definition of “medical device”<sup>253</sup> to be registered prior to placement into the market and all

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<sup>252</sup> Medical Device Authority, Medical Device Regulatory system in Malaysia <<http://www.mida.gov.my/env3/uploads/events/B2B2013/3-MDA.pdf>>, p.2.

<sup>253</sup> Medical Device Act 2012

Section 2 “medical device” means any instrument, apparatus, implement, machine, appliance, implant, in vitro reagent or calibrator, software, material or other similar or related article—

a) intended by the manufacturer to be used, alone or in combination, for human beings for one or more of the specific purposes of—

- (i) diagnosis, prevention, monitoring, treatment or alleviation of disease;
- (ii) diagnosis, monitoring, treatment, alleviation of or compensation for an injury;
- (iii) investigation, replacement, modification, or support of the anatomy or of a physiological process;
- (iv) supporting or sustaining life;
- (v) control of conception;
- (vi) disinfection of medical devices;
- (vii) providing information for medical or diagnostic purposes by means of *in vitro* examination of specimens derived from the human body;

which does not achieve its primary intended action in or on the human body by pharmacological, immunological or metabolic means, but which may be assisted in its intended function by such means; and

establishment to be licensed to conduct activities relating to manufacturing, importing, representing foreign manufacturer, distributing medical devices in Malaysia.

The Medical device regulatory system

Medical Device Authority (MDA) regulates manufacturing and distributing of devices throughout of its three-phase-life cycle<sup>254</sup> as follows:

#### 1. Pre-market control

Prior to placement into the market, the Act provides the manufacturers of medical devices shall ensure their products conform to Essential Principles of Safety and Performance for Medical Devices (EPSP), Medical Device Act 2012 and subsidiary legislations. MDA verifies evidence of conformity during registration of medical device and licensing of establishment. Only registered medical devices are allowed to be placed into the market by licensed establishments<sup>255</sup>.

#### 2. Placement on-market control

To place the devices into the market, Manufacturers or distributors need to proceed as follows

##### 2.1 Registration of medical device

Section 5 of this Act<sup>256</sup> provides that no medical device shall be imported, exported or placed in the market unless the medical device is registered under this Act. If they contravene such section, they commit an offence. For registration, manufacturers or distributors shall apply for registration of medical device to MDA.

##### 2.2 Requirement for licensing of establishments

Section 15 of this Act<sup>257</sup> requires manufacturers, importers or distributors of medical devices must possess valid license to carry out activities related to

b) any instrument, apparatus, implement, machine, appliance, implant, *in-vitro* reagent or calibrator, software, material or other similar or related article, to be used on the human body, which the Minister may, after taking into consideration issues of public safety, public health or public risk, declare to be a medical device by order published in the *Gazette*.

<sup>254</sup> Medical Device Authority, *supra note 168*, p.6.

<sup>255</sup> *Ibid.*, p.13.

<sup>256</sup> Medical Device Act 2012

Section 5 Requirement for registration of medical device

(1) No medical device shall be imported, exported or placed in the market unless the medical device is registered under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

<sup>257</sup> Medical Device Act 2012

Section 15 Requirement for establishment licence

medical devices in Malaysia before start to operate them. If they contravene such section, they commit an offence. For registration, they shall apply for establishment licenses to MDA.

### 3. Post-market control

The Act provides manufacturers or importers shall monitor safety and performance of products and carry out post-market surveillance system as prescribed by the minister of Health include establish and implement documented procedures and maintain records of reported problems or complaints relating to the safety and the performance characteristics of its medical device. In addition, they shall undertake corrective or preventive action in relation to a medical device imported and placed in the market which may include the return of the device to them, modification or exchange or destruction of the devices or specific advice on the use of the medical device.

### **c.2) Medical Device Authority Act 2012**

This Act deals with composition of the MDA and its authority. The Functions of the MDA are to implement, enforce, consider and recommend reform to the medical device laws, regulate all matters in relation to medical device, its industries and activities provide consultancy & advisory service and any other services in relation to medical device, its industries and activities, utilize property of the Authority in such manner as the Authority may think expedient and impose fees or charges for services rendered.

### **(3) Cosmetic Law**

In Malaysia, there is no exist Cosmetic Act as if in Thailand. However, cosmetics in Malaysia are regulated under the Sale of Drugs Act 1952 (Revised 1989) and the Control of Drugs and Cosmetics Regulations 1984 (amendment 2009). They provide that no person shall manufacture, sell, supply, import or possess any cosmetic unless the cosmetic is a notified cosmetic and the person responsible for placing the notified cosmetic in the market shall comply to any directives or guidelines issued under regulation and any conditions imposed by the Director of Pharmaceutical Services (DPS).

The company or person placing the cosmetics in the market must be responsible for ensuring safety, quality and claimed benefit of the cosmetic product placed in the local market and to ensure that the product complies with all existing regulations.

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(1) No establishment shall import, export or place in the market any registered medical device unless it holds an establishment licence granted under this Act.

(2) Any establishment who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Cosmetic Manufacturers need to ensure that cosmetics are manufactured in facilities that comply with the ASEAN Guidelines on Good Manufacturing Practice (GMP).

Moreover, those regulations provide that no person shall possess or publish any label, information, pictorial, statement or document which describes the claim of the cosmetics otherwise than in the manner as determined in the directives or guidelines issued by the DPS<sup>258</sup>.

### **3.3.2.3 Narcotics Control Laws**

Drug trafficking and abuse are serious issues confronting Malaysia as if in other countries. Although Malaysia is not a country of drug origin, it appears the widespread of illicit drugs along the coast line area and remains of the complex network of domestic drug trafficking organizations<sup>259</sup>. Malaysia will continue to cooperate with law enforcement to stem illicit trafficking of drugs.

Malaysia's drug laws are found in five major statutes as follows<sup>260</sup>;

#### **(1) Dangerous Drugs Act 1952**

This Act represents the major legislation in relation to aspects of drug offences including to provide that no person shall sell, offer to sell narcotics or poss of them in more than specified amount by the law such as possession of 15 grammes or more in weight of heroin or 1,000 grammes or more in weight of raw or prepared opium ; no person shall plant or cultivate any plant from which raw opium, poppy-straw or cannabis or no person shall import into or export from Malaysia any dangerous drug specified in the First Schedule.

#### **(2) Drug Dependants (Treatment and Rehabilitation) Act 1983**

This Act represents the major legislation in relation to treatment and rehabilitation measures of any person who has been certified as dependent. Section 2 of the Act states that "drug dependant" means a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterized by behavioral and other responses including the compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence.

In regard to the legal measure on the treatment for drug dependants, Drug Dependants (Treatment and Rehabilitation) Act 1983 provides for both compulsory treatment and voluntary treatment.

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<sup>258</sup> National Pharmaceutical Control Bureau , Ministry of Health , UPDATES ON ASEAN COSMETIC DIRECTIVE, <[http://ctfamalaysia.org/file\\_dir/6694423494f61659eb1c7a.pdf](http://ctfamalaysia.org/file_dir/6694423494f61659eb1c7a.pdf)>, p.4-7.

<sup>259</sup> Kobkul Chantawaro et al., Legal measures relating to drugs in Laos PDR, Myanmar and Malaysia, Analysis of ASEAN's drugs law Project Phase I , Division of Legal affairs, Office of the Narcotics Control Board, Ministry of Justice, 2003, p.168.

<sup>260</sup> *Ibid.*, p.170.

### 1. Compulsory treatment

Section 3 of the Act provides that any Rehabilitation Officer or any police officer may take into custody any person whom he reasonably suspects to be a drug dependant for a period not exceeding twenty-four hours at any appropriate place for the purpose of undergoing tests.

If the tests cannot be held or completed or the results of such tests cannot be obtained within twenty-four hours from the time a person is taken into custody, section 4 states as follows:

(1) the person may be released on bail, with or without surety, by an officer to attend at the time and place mentioned in the bond; or

(2) the person may be produced by an officer before a Magistrate, and the Magistrate shall, if the officer reports to the Magistrate that it is necessary to detain him for the purpose of undergoing tests, order him to be so detained for such period not exceeding fourteen days to undergo tests or the Magistrate may release him on bail, with or without surety, to attend at such time and place as may be mentioned in the bond for the purpose of undergoing such tests, or where such person has already undergone tests but the result of such tests has not yet been obtained, the Magistrate may release him on bail, with or without surety, to appear at such place and time as may be mentioned in the bond to receive the result of the tests.

Where a person who has undergone the tests referred to in section 3 or 4 and, in consequence of such tests, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear before a Magistrate, and the Magistrate shall upon the recommendation of a Rehabilitation Officer and after giving such person an opportunity to make representations (1) order such person to undergo treatment and rehabilitation at a Rehabilitation Centre specified in the order for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years; or (2) order such person to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years.

### 2. Voluntary treatment

Section 8 of the Act states that any person who is a drug dependant may apply to a Rehabilitation Officer to be provided with treatment and rehabilitation in respect of his drug dependency. Where a person makes such an application the Rehabilitation Officer shall as soon as possible make arrangements for the applicant to undergo tests. If the tests is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the Rehabilitation Officer shall decide whether such person should (1) undergo treatment and rehabilitation at a Rehabilitation Centre for a period of two years and thereafter undergo supervision by an officer for a period of two years; or (2) be placed under

the supervision of a Rehabilitation Officer for a period of not less than two and not more than three years and be subject to such conditions as the Rehabilitation Officer may consider necessary or beneficial for his treatment and rehabilitation, and shall inform the applicant of his decision<sup>261</sup>.

### **(3) Dangerous Drugs (Special Preventive Measures) Act 1985**

This Act is aimed at enhancing the effectiveness of countermeasures taken by the relevant authorities against those who are involved in drug trafficking. It empowers the government to detain anyone suspected of being a trafficker without having to bring the suspect to any court of law for a period not exceeding sixty days and also provides that the Minister of Home Affairs may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order direct that such person be detained for a period not exceeding two years<sup>262</sup>.

### **(4) Dangerous Drugs (Forfeiture of Property) Act 1988**

This Act empowers the relevant authorities to trace, freeze and forfeit assets of convicted drug traffickers. Under this Act provisions are made for seizure and forfeiture of property that are connected with any activities related to the offence under this act, that is the Dangerous Drugs Act 1952, or any foreign law corresponding to these acts or to the provisions for offences under these acts<sup>263</sup>.

### **(5) Poison Act 1952**

The Poisons Act 1952 is aimed at controlling the import and sale of poisons. Section 2 of the Act provides that “Poisons” refers to any substance specified in the Poisons List and includes any mixture, preparation, solution or natural substance containing such substance other than an exempted preparation or an article or preparation included for the time being in the Second Schedule of the Act.

The poisons list under the First Schedule of the Act is divided into 2 parts as follows:

Part 1 is the poisons prohibited from being sold or supplied to any person except by wholesale under license or by retail sale effected by or under the immediate personal supervision of a licensed pharmacist (section 18). Under this Part, the poisons can be divided into 4 groups as follows:

- Group A is the poison which shall not be sold or supplied by wholesale or retail except by a licensed wholesaler to a licensed pharmacist or to another licensed wholesaler; or by a licensed wholesaler to be immediately exported to a purchaser outside Malaysia (section 20).

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<sup>261</sup> *Ibid.*, pp.174-176.

<sup>262</sup> *Ibid.*, pp.177-178.

<sup>263</sup> *Ibid.*, p.179.

- Group B is the poison which shall not be sold or supplied by retail to any person except by a registered medical practitioner, registered dentist, veterinary officer, or licensed pharmacist (in accordance with a prescription) (section 21)

- Group C is the poison which shall not be sold or supplied by retail to any person except as a dispensed medicine or an ingredient in a dispensed medicine (section 22).

- Group D is the poison which shall not be sold or supplied by retail to any person except by a licensed pharmacist to a person known personally to such pharmacist or introduced to the pharmacist personally by a person known personally to the pharmacist (section 23).

Part 2 is the poisons prohibited from selling or supplying otherwise than in accordance with this Act and of any regulations made thereunder; for example, arsenic or mercury (section 25). The type of poisons provided in the Schedule<sup>264</sup> include substances used for medical purposes or agricultural purposes. Some of them in the Schedule are Psychotropic substances as listed in the Part 1 Group B<sup>265</sup>, such as Acetylcholine Amphetamine (DD), or substances which are provided that only for medical practitioners or veterinarians or dentists use; for example, Phenothiazine L-Tryptophan or Anaesthetics. The registered medical practitioners or pharmacists can only sell those of prescribed poison<sup>266</sup>.

### 3.3.3 Governmental Authority

#### (1) Ministry of Health

##### a. Administrative structure

Under the administrative structure of the Ministry of Health, the chief administrator of the ministry is Minister of Health. There are also a Deputy Minister and a Secretary General who regulate general administration of the Ministry; for instance, finance division, human resource division and other agencies under the Ministry such as Medical Device Authority or Malaysia Health Promotion Board.

A Director-General of Health is a position inferior to the Secretary General. It is a substantial position because he directly monitors public Health in these fields with the responsibilities as follows:

##### 1. Public health

There is a Deputy Director- General (Public health) playing a role as a chief. He regulates Health Divisions such as Disease Control Division, Nutrition Division etc.

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<sup>264</sup> See the First Schedule: Poison List in Appendix.

<sup>265</sup> Kobkul Chantawaro et al., *supra* note 174, p.181.

<sup>266</sup> *Ibid.*, p.180.

## 2. Medical

There is a Deputy Director- General (Medical) playing a role as a chief. He regulates Medical divisions such as Medical Development Division, Medical Practice Division, Nursing Division etc.

## 3. Research and Technical support

A Deputy Director- General (Research & Technical support) is a chief administrator in this field. He regulates Research and Technical support of the Ministry including Planning Division, Engineer services and National Institute of Health Secretariat.

## 4. Oral Health

A Principal Director (Oral health) is a chief administrator in this field. He regulates of Oral Health Division including Oral Health Development and Policy Division and Oral Health Promotion Regulation and Practice Division.

## 5. Pharmaceutical Services

There is a Principal Director (Pharmaceutical Services) playing a role as a chief. He regulates Pharmaceutical services such as Pharmacy Practice and Development Division, National Pharmaceutical control Division etc.

## 6. Food Safety and Quality

There is a Principal Director (Food Safety & Quality) playing a role as a chief. He regulates Food Safety and Quality including Planning, Policy Development & Codex Standard Division and compliance & Industrial Development Division.

### **b. Competent authority**

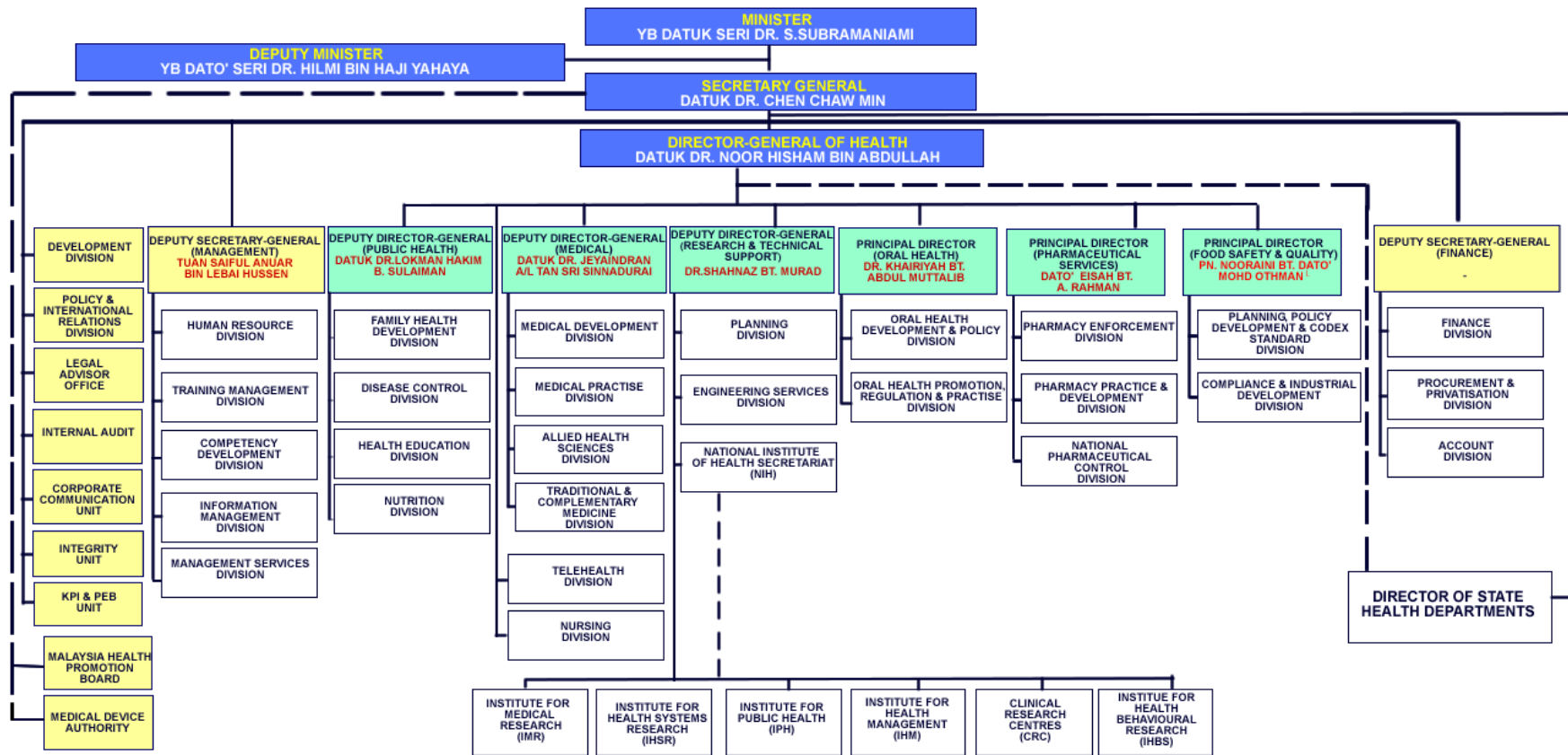
The mission of the Ministry of Health is<sup>267</sup> to facilitate and support the people to attain fully their potential in health appreciate health as a valuable asset, take individual responsibility and positive action for their health and to ensure a high quality health system that is customer centered, equitable, affordable, efficient technologically appropriate, environmentally adaptable and innovative with emphasis on professionalism, caring and teamwork value respect for human dignity and also community participation.

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<sup>267</sup> Ministry of Health Malaysia, <<http://www.moh.gov.my/english.php/pages/view/131>>. (accessed November 14, 2015).



### MINISTRY OF HEALTH ORGANISATION CHART



(Updated On Jul 04, 2015)

## **(2) Social Security Organization**

### **a. Administrative structure**

Social Security Organization is under Ministry of Human Resource to implement and administer the social security schemes under the Employees' Social Security Act 1969. The Minister of Human Resource shall appoint a Director General who shall be the Chief Executive Officer (CEO) in order to administrate the Organization. At present, besides the CEO, There are three Deputy Chief Executive Officers; Deputy Chief Executive (Corporate), Deputy Chief Executive (Investment Deputy) and Chief Executive (Operation), to assist the CEO with his duties.<sup>268</sup>

### **b. Competent authority**

Social Security Organization is the administrator of the Organization in accordance with the Employees' Social Security Act 1969. Its mission is to provide a social security protection to employees and their dependants through social security schemes and to increase awareness on occupational safety and health that will ultimately improve the Employees' social wellbeing.<sup>269</sup>

## **(3) Malaysian Health Promotion Board**

### **a. Administrative structure**

The Malaysian Health Promotion Board is under Ministry of Health. Members of the Board consists of the following members<sup>270</sup>:

1. a Chairman to be appointed by the Prime Minister upon the advice of the Minister of Health;
2. a representative of the Ministry of Health nominated by the Minister of Health;
3. a representative of the Ministry of Youth and Sports nominated by the Minister of Youth and Sports;
4. a representative of the Ministry of Culture, Arts and Heritage nominated by the Minister of Culture, Arts and Heritage;
5. a representative of the Ministry of Finance nominated by the Minister of Finance;
6. two community members from registered non-governmental organizations from the health sector nominated by the Minister of Health;

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<sup>268</sup> SOCIAL SECURITY ORGANISATION, <<http://www.perkeso.gov.my/en/about-us/organisation-chart.html>>, (accessed November 14, 2015).

<sup>269</sup> SOCIAL SECURITY ORGANISATION, <<http://www.perkeso.gov.my/en/about-us/organisation-chart.html>>, (accessed November 14, 2015).

<sup>270</sup> MALAYSIAN HEALTH PROMOTION BOARD, <<http://www.mysihat.gov.my/index.php/en/ahli-lembaga>>, (accessed November 14, 2015).

7. two community members from registered non-governmental organizations from the sport sector nominated by the Minister of Youth and Sports;

8. two community members from registered non-governmental organizations from the culture sector nominated by the Minister of Culture, Arts and Heritage; and

9. not more than six members representing professions or possessing expertise relevant to the functions of the Board on the nomination of the Minister. The such members nominated shall include one person from the health promotion sector, one from the health research sector and others from other areas which may include education, law, finance, advertising, social marketing, youth and women's interests.

The Board shall appoint a Chief Executive Officer to be the Executive Secretary of the Board and be responsible for carrying out the decisions and directions of the Board; preparing strategic plans, programmes and budgets for the consideration of the Board; executing all the plans, programmes and projects of the Board for effective and optimal performance and also having general control of the officers and servants of the Board.

#### **b. Competent authority**

The functions of The Malaysian Health Promotion Board are to develop the capacity of organisations, including health related and community based, for health promotion; plan and implement health promotion programmes and activities for the benefit of the community, with a particular focus on youth; develop and support multi-strategy programmes that promotes and support healthy lifestyles and healthy environment through various settings and sectors; develop and support programmes to improve population health by preventing, reducing or stopping the use of tobacco products; fund research relevant to health promotion; and fund and support sporting, recreational and cultural organisations to promote healthy lifestyles and healthy environments<sup>271</sup>.

#### **(4) Narcotics Crimes Investigation Department (NCID)**

##### **a. Administrative structure**

The NCID are led by a director with the rank of Commissioner of Police (CP) and assisted by three deputy directors, the deputy director I (Intelligence/Operations), deputy director II (Enforcement/Prevention/Police General) and deputy director III (Forfeiture of Property/ Detention/Legal)<sup>272</sup>.

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<sup>271</sup> MALAYSIAN HEALTH PROMOTION BOARD <<http://www.mysihat.gov.my/index.php/en/objective-function>>, (accessed November 14 , 2015).

<sup>272</sup> Narcotics Crimes Investigation Department (NCID), <<http://myjabatan.com/police/NCID.htm>> (accessed November 7, 2015).

### b. Competent authority

The functions of the NCID are to enforce drug abuse and drug trafficking laws; collect, study, assess and spread drug-related information; investigate distributors activities and drug trafficking syndicates; fight drug smuggling activities including chemicals used to process drugs; Implement prevention of drug abuse programmes exchange data/information with domestic and international agencies; keep records and statistics related to drug distribution and other drug-related matters; surveillance activity for former drug offenders or members formerly associated with drug trafficking syndicates provide training locally/overseas for officers or members of narcotics department and attend the meetings, seminars related to drugs, locally or overseas<sup>273</sup>.

## 3.4 Social Welfare Law

Social welfare is an important issue that Malaysia constantly concerns about as can be obviously seen from the Malaysian government's announcement positioning this issue as one of national policies. **The National Social Welfare Policy** was firstly announced in A.D. 1990 with its ultimate goal to create a contented and strong society for national development which is independent, blessed with equitable opportunities and caring society. Three main strategies of this Policy are to develop human potential to the optimum and strengthen society to face current social challenges, to create various facilities for enhancing self-development and development of the individual, and to build and inculcate the spirit of mutual help and assistance to reinforce a caring culture. In addition, in A.D. 2003, Malaysian government announced **the National Social Policy** with its ultimate goal to guarantee that every individual, family and society can participate and contribute to national development and live their peaceful life regardless of ethnicity, religion, culture, gender, political affiliation and regions.<sup>274</sup> Apart from these policies, Malaysia also has their specific national policies for development of some specific group of people, for example, National Policy on Women, National Policy for the Older Persons, National Policy for Disabled Persons, National Policy on Children and National Child Protection Policy, etc.<sup>275</sup> From applying and developing these policies, several institutions and laws relating to social welfare have been continuously established and restructured.

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<sup>273</sup> *Ibid.*

<sup>274</sup> KPWKM, 'Policy' <<http://www.kpwkm.gov.my/en/dasar1>>.

<sup>275</sup> JKM, 'Policy/Plan for Action' <[http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=dasar\\_\\_\\_pelan\\_tindakan&lang=en](http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=dasar___pelan_tindakan&lang=en)>.

Malaysia as one of the Founding Fathers of ASEAN (Association of Southeast Asian Nations) needs to perform their duties according to policies and measures of the ASEAN in order to achieve its aims and purposes consisting development of social welfare as one of its essential aim.<sup>276</sup> Since an establishment of the ASEAN in A.D. 1967, several operations aiming to improve social welfare in general or social welfare of specific group of people have been launched, such as, ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD), ASEAN Strategic Framework on Social Welfare and Development, and ASEAN Commission on the Promotion of the Rights of Women and Children (ACWC), etc. Moreover, from an establishment of ASEAN Community, ASEAN Socio-Cultural Community (ASCC) which is one of three pillars of this community also plans to improve social welfare as one of its ultimate goal.<sup>277</sup>

Policies on social welfare of Malaysia nowadays can be divided into six groups considering from main target groups of Department of Social Welfare under Ministry of Women, Family and Community Development, namely, children, people with disability, older persons, destitute persons, family (women and girls, single parents, victims of domestic violence, the poor and people with problems), and disaster victims.<sup>278</sup> Voluntary welfare organisations also are one of target groups of the Department of Social Welfare which will perform their duties alongside with the Department to achieve both aims.

Malaysian government always performs their duties on social welfare via **Department of Social Welfare (JKMM)**, so the history of this Department is important to understand its social welfare policy. The JKMM was initially found in A.D. 1946 as Social Welfare Department of Malaya intending to resolve problems occurred from the World War II. Since its beginning, this Department has been restructured several times while fulfilling its role on national development, and its role and function have been expanded to cover prevention and rehabilitation services related to social issues and community development.<sup>279</sup> Then, in A.D. 2001, Ministry of Women Affairs was found by the country's aspirations from the Fourth World Conference on Women, which was held in Beijing in A.D.

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<sup>276</sup> Malaysia Chairman of ASEAN 2015, 'About ASEAN' <<http://asean2015.gov.my/index.php/asean-2015/about-asean.html>>.

<sup>277</sup> Malaysia Chairman of ASEAN 2015, 'ASEAN Socio-Cultural Community' <<http://asean2015.gov.my/index.php/component/k2/item/22.html?Itemid=1362>>.

<sup>278</sup> School Malaysia, 'Department of Social Welfare' <[http://www.schoolmalaysia.com/resources/govn\\_social\\_welfare.php](http://www.schoolmalaysia.com/resources/govn_social_welfare.php)>.

<sup>279</sup> JKM, 'History' <<http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=sejarah&lang=en>>.

1995, aiming to raise the status of women in the country.<sup>280</sup> In A.D. 2004, this Ministry and the Social Welfare Department, at that time, operating under Ministry of National Unity and Community Development, both were restructured and combined together to be **Ministry of Women, Family and Community Development (KPWKM)** comprising of the **Department of Social Welfare (JKMM)** under their command.<sup>281</sup>

Originally, Main purpose of the Ministry of Women Affairs is to raise the status of women in the country.<sup>282</sup> After recent restructuring as the KPWKM, its purpose is to achieve gender equality, family unit and social welfare development as a caring and prosperous society;<sup>283</sup> Therefore, development of social welfare is also one of the Department's main duties.

There are four objectives of the Department of Social Welfare which are: (1) provide protection and rehabilitation to the target groups of the Department, (2) develop society through attitude change and increasing their capacity for self-reliance, (3) create a caring society, and (4) Improve the wellbeing of the people in the society through social welfare and social development services and sharing of social responsibilities.<sup>284</sup>

In order to achieve these objectives, Malaysian government reached agreements with several international cooperations, and they also enacted several measures, policies and laws for supporting their officials and institutes' operations as will be discussed further in the following context.

### 3.4.1 Laws Relating to Social Welfare of Children

#### (1) Introduction

The legal definition of "Children" of Malaysia means that 'a person under the age of eighteen years'.<sup>285</sup> Children are considered as a valuable resource for the nation; hence, Malaysian children always receive the ultimate attention from the government regardless of

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<sup>280</sup> KPWKM, 'Background' <<http://www.kpwkm.gov.my/en/latar-belakang>>.

<sup>281</sup> JKM, 'History' <<http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=sejarah&lang=en>>.

<sup>282</sup> KPWKM, 'Background' <<http://www.kpwkm.gov.my/en/latar-belakang>>.

<sup>283</sup> KPWKM, 'Vision, Mission and Objective' <<http://www.kpwkm.gov.my/en/visi-misi-dan-objektif>>.

<sup>284</sup> KPWKM, 'Vision, Mission and Objective' <<http://www.kpwkm.gov.my/en/visi-misi-dan-objektif>>.

<sup>285</sup> JKM, 'Acronyms and Abbreviations of Law Enforcement' <[http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=akronim\\_dan\\_singkatan\\_dalam\\_pelaksanaan\\_undang-undang&lang=en](http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=akronim_dan_singkatan_dalam_pelaksanaan_undang-undang&lang=en)>.

different cultural background, race and faith.<sup>286</sup> The beginning of social welfare development on children of Malaysia could be obviously seen in A.D. 1995 after the ratification of the United Nation Convention on the Rights of Child (UNCRC) of Malaysia. This action of the government led to several enactments of municipal laws relating to child protection, especially the Child Act 2001.<sup>287</sup> In 2004 The establishment of the Ministry of Women, Family and Community Development (KPWKM) laid the foundation for an effective and operational child protection system. Then, the Child Division was created at Department of Social Welfare, an agency under the Ministry in 2005.<sup>288</sup> Previously, government policies relating to children were scattered, and most of them were contained within general national social policies, such as, National Social Welfare Policy, National Policy on Women or National Social Policy, etc.; however, the policies were arranged into order in 2009 via the government's announcement of the National Policy on Children and National Child Protection Policy. The former highlights the rights of children to survival, protection, participation and the importance of an environment which is conducive for the children's holistic development. It also focuses on enhancing the commitment and social responsibilities of all parties by putting the child's interest first above all aspects. While, the latter policy ensures that children are protected from all forms of neglect, abuse, violence and exploitation.<sup>289</sup> The main objectives of the policies highlight the rights of the child to survival, protection, development and participation being in line with the CRC. Furthermore, the Action Plans formulated by the KPWKM were also approved by the government.<sup>290</sup>

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<sup>286</sup> Rojanah Kahar and Najibah M Zin, 'Child Related Policy and Legislative Reforms in Malaysia' (2011) 8 SPS 6.

<sup>287</sup> ITU, 'Child Online Protection' <<http://www.itu.int/en/cop/Documents/profiles/malaysia.pdf>> p1.

<sup>288</sup> KPWKM, 'Child Protection and Child Welfare Services in Malaysia' <[http://www.unicef.org/eapro/Malaysia\\_Beijing\\_paper\\_26\\_Oct\\_2010\\_FINAL.pdf](http://www.unicef.org/eapro/Malaysia_Beijing_paper_26_Oct_2010_FINAL.pdf)> p2.

<sup>289</sup> Unicef, 'The Launch of "Child Protection System in Malaysia"' <[http://www.unicef.org/malaysia/media\\_news14-the\\_launch-of\\_child\\_protections\\_system\\_in\\_malaysia.html#.Vmqlw0p97IU](http://www.unicef.org/malaysia/media_news14-the_launch-of_child_protections_system_in_malaysia.html#.Vmqlw0p97IU)>.

<sup>290</sup> ITU, 'Child Online Protection' <<http://www.itu.int/en/cop/Documents/profiles/malaysia.pdf>> p2.

## (2) Relevant Legislations

### a. primary international agreement ratified by Malaysia:

a.1 Convention on the Rights of the Child (CRC):<sup>291</sup> An important international convention of the United Nation in respect of the rights of the child emphasizes that States Parties shall respect and ensure the rights of the child according to minimum standards provided in this Convention. Fundamental rights for children which every States Parties shall assure under this Convention are (1) Survival rights: children shall acquire standard health care service, peace and safety (2) Development rights: children shall acquire warm and loving family, high-quality education and adequate food (3) Protection rights: children shall be freed from violence, abuse, abandonment and any forms of exploitation and (4) Participation rights: children shall be entitled to right to express and be heard and the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life..<sup>292</sup> Malaysia ratified this Convention in 1995 with twelve reservations, but, afterwards, some of the reservations were lifted by the government. Nowadays, there are only five reservations left which can be seen as the determination of Malaysian government in development of child protection system. Moreover, several domestic laws were enacted or amended to fulfill their obligations under the Convention and achieve their objectives and purposes, for instance, Care Centres Act 1993, Child Care Centres Act 1984, and Child Act 2001, etc.<sup>293</sup>

a.2 Rabat Declaration on Child's Issues in the Member States of the Organization of the Islamic Conference A.D. 2005 (Rabat Declaration):<sup>294</sup> This Decalration can be considered as the first Islamic document to approach in an integrated and comprehensive manner the general rights of children, based on the principles of Syariah. It also attempts to adhere with the international law and the Universal Declaration of Human

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<sup>291</sup> Convention on the Rights of the Child <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

<sup>292</sup> Unicef, 'Rights under the Convention on the Rights of the Child' <[https://www.unicef.org/crc/index\\_30177.html](https://www.unicef.org/crc/index_30177.html)>.

<sup>293</sup> Unicef, 'CRC Reservations' <[http://www.unicef.org/malaysia/17982\\_crc-reservations-malaysia.html](http://www.unicef.org/malaysia/17982_crc-reservations-malaysia.html)>.

<sup>294</sup> Rabat Declaration on Child's Issues in the Member States of the Organization of the Islamic Conference <<http://www.refworld.org/pdfid/44eb01b84.pdf>>.



Rights, international instruments and declarations of child.<sup>295</sup> This Declaration commits to (1) respect and ensure the rights of each child in our societies without discrimination of any kind, (2) adhere to the general principles of child rights, inter alia, the best interests of the child, nondiscrimination, participation, survival and development, which provide the framework for all action concerning children and adolescents alike, (3) preserve and enhance our common Islamic heritage to increase the awareness of the Muslim Youth of the values of Islam, and instill into them a sense of pride in the achievements of the glorious Islamic civilization; and to contribute to more understanding and tolerance among peoples and religions, and (4) publicize the values of Islam with regard to family, women and children through mass media, to disseminate the true and honourable image of Islam and the essence of its eternal Sharia, and to promote, among Member States, Islamic solidarity on the child's issues. Specifically, it aims to deal with topics of health, HIV/AIDS, child protection against violence, exploitation and abuse, education and investing in children.<sup>296</sup>

a.3 ASEAN Declaration on the Elimination of Violence Against Women and Children: This Declaration reaffirms the goals and commitments of ASEAN to eliminate violence against women and children within the region.<sup>297</sup> The Declaration declares that ASEAN Member States express common resolve to eliminate violence against women and violence against children in the region through the following measures: (1) Strengthen and, where necessary, enact or amend national legislations, (2) Integrate legislations, policies and measures to prevent and eliminate violence against women and violence against children, (3) Strengthen a holistic, multi-disciplinary approach to promote the rights of women and children and adopt a gender responsive, child sensitive, and age-responsive approach to eliminate violence against women and violence against children, (4) Strengthen the existing national mechanisms, with the assistance, where necessary, of the ACWC and other related stakeholders, (5) Strengthen the capacity of any relating officers, (6) Encourage research and data collection and analysis, (7) Strengthen the provision of support social welfare services to women and children victims/survivors of violence and their families in ASEAN, and

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<sup>295</sup> Rojanah Kahar and Najibah M Zin, 'Child Related Policy and Legislative Reforms in Malaysia' (2011) 8 SPS 7.

<sup>296</sup> Rebat Declaration on Child's Issues in the Member States of the Organization of the Islamic Conference <<http://www.refworld.org/pdfid/44eb01b84.pdf>>.

<sup>297</sup> ASEAN Declaration on the Elimination of Violence Against Women and Children <[http://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW\\_violenceagainstchildren.pdf](http://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainstchildren.pdf)>.

(8) Strengthen partnerships with external parties at international, regional, national and local levels<sup>298</sup>

b. primary domestic law of Malaysia:

b.1 The Federal Constitution of Malaysia:<sup>299</sup> The Constitution sets out the basic human rights standards which also extend to children, for example, liberty of the person, prohibition of slavery and forced labour, and rights in respect of education, etc.<sup>300</sup>

b.2 Child Act 2001: This Act is the most important law relating to Children of Malaysia which was enacted to fulfill the country's obligations under the CRC. The Act consolidated and amended the laws relating to the care, protection and rehabilitation of children and to provide for matters connected therewith and incidental thereto; and based on the four core principles of the CRC that is non-discrimination, best interest of the child, the right to life, survival and development, and respect for the views of the child. Main content of this Act can be divided into fifteen sections which are:

b.2.1) Preliminary mentioning short title, application, commencement and interpretation of words within this Act

b.2.2) Co-ordinating Council for the Protection of Children mentioning establishment, membership, meeting and committees of this Council established for advising the government on the issue relating to child protection

b.2.3) Appointment of Protector, Etc. mentioning appointment and powers of Protectors, Registrar General, Registrar and probation officers which are Social Welfare Officers appointed by the Minister to exercise the powers and perform the duties of Protectors, Registrar General, Registrar and probation officers

b.2.4) Courts for Children mentioning constitution and jurisdiction of Court for Children, place of sitting and persons who may be present in Court for Children, and restrictions on media reporting and publication

b.2.5) Children in Need of Care and Protection mentioning meaning of children in need of care and protection which will be take into temporary custody before

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<sup>298</sup> ปฏิญญาว่าด้วยการจัดความรุนแรงต่อสตรีและการจัดความรุนแรงต่อเด็กในอาเซียน <[http://www.asccthailand.org/asccnet2/images/users/asccmsdhs/docs/7\\_ACWC\\_Final.pdf](http://www.asccthailand.org/asccnet2/images/users/asccmsdhs/docs/7_ACWC_Final.pdf)>.

<sup>299</sup> Federal Constitution of Malaysia <<http://www1.umn.edu/humanrts/research/malaysia-constitution.pdf>>.

<sup>300</sup> Unicef, 'Malaysian Laws' <[http://www.unicef.org/malaysia/childrights\\_malaysian-laws.html](http://www.unicef.org/malaysia/childrights_malaysian-laws.html)>.

bringing them before Courts for Children to consider and provide proper order, treatment child in need of medical examination or treatment, duty of member of the family and offences in relation to the health and welfare of children

b.2.6) Children in need of Protection and Rehabilitation mentioning meaning of children in need of protection and rehabilitation which any Protector or police officer may order the child to be removed to a place of refuge before bringing them to before Courts for Children to consider and provide proper order, and relating offences

b.2.7) Beyond Control mentioning a child that parent or guardian unable to exercise proper control, so the parent or guardian of that child requests the Court for Children in writing to detain a child in an approved school, place of refuge, probation hostel with/without supervision by probation officer

b.2.8) Trafficking in and Abduction of Children mentioning protection of the child from unlawful transfer of possession, custody or control of child

b.2.9) Institutions mentioning any relating institutions, namely, places of safety, places of refuge, places of detention, probation hostel, approved schools, Henry Gurney Schools, a child that was sent to, escaped from or removed from those schools, and offence of removing or helping a child to escape from those schools

b.2.10) Criminal Procedure in Court for Children mentioning criminal procedure for criminal case relating to a child, punishment of child and parent, and probation

b.2.11) In the Care of Fit and Proper Person mentioning an order of the Court to place a child in the care of fit and proper person, child who escapes or is removed from the care of fit and proper person and offences of removing or helping a child to escape from the care of fit and proper person

b.2.12) Contribution Orders mentioning an order of the Court requiring the parent or guardian or other person to make a contribution when there is an order of the Court to place a child in the care of a fit and proper person, a probation hostel, an approved school, a Henry Gurney School, an approved institution or a place of refuge

b.2.13) Investigation, Arrest, Search, Seizure, Etc. mentioning power of investigation, arrest, search, seizure, etc. of a Protector or police officer relating to any offences under this Act

b.2.14) Miscellaneous mentioning any other relevant topics, for example, power of Court for Children conferred on High Court and register of children, etc.

b.2.15) Savings and Transitional Provisions<sup>301</sup>

b.3 Other relevant legislations: Adoption Act 1952 (Act 257), Anti-Trafficking in Persons Act 2007 (Act 670), Births and Deaths Registration Act 1957 (Act 299), Care Centres Act 1993 (Act 506), Child Care Centres Act 1984 (Act 308), Child Witness Evidence Act 2007 (Act 676), Children and Young Persons (Employment) Act 1966 (Revised 1988) (Act 350), Counsellors Act 1988 (Act 580), Criminal Procedure Code (Act 593), Domestic Violence Act 1994 (Act 521), Education Act 1996 (Act 550), Guardianship of Infants Act 1961 (Act 351), Islamic Family Law (Federal Territory) Act 1984 (IFLA, Act 303), Law Reform (Marriage and Divorce) Act 1976 (Act 164), Married Women and Children (Maintenance) Act 1950 (Act 263), Penal Code (Act 574), Registration of Adoption Act 1952 (Act 253) and Workers' Minimum Standards of Housing and Amenities Act 1990 (Act 446)<sup>302</sup>

### 3.4.2 Laws Relating to Social Welfare of People with Disabilities

#### (1) Introduction

The legal definition of "People with Disabilities" of Malaysia means that 'Those who have long term physical, mental, intellectual or sensory impairments which pose as barriers during interaction and this condition may hinder their full and effective participation in society'.<sup>303</sup> The Disabled persons as members of society should be able to access to equal rights and opportunities as same as ordinary people; therefore, the government has attempted to enhance social welfare of this group of people. Principles and policies were created to achieve its goal. Previously, Policies about the disabled had been contained within National Social Welfare Policy or National Social Policy; however, in A.D. 2007, the first specific National Policy for Disabled Persons and Action Plan for Disabled Persons were announced. These Policy and Plan announced by the government aiming to recognize and accept the principle that the disabled have equal rights and opportunities to full participation in society; ensure that the disabled enjoy equal rights, opportunities and Easy

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<sup>301</sup> Child Act 2001 (Act 611).

<sup>302</sup> Unicef, 'Malaysian Laws' <[http://www.unicef.org/malaysia/childrights\\_malaysian-laws.html](http://www.unicef.org/malaysia/childrights_malaysian-laws.html)>.

<sup>303</sup> JKM, 'Acronyms and Abbreviations in the Implementation of Law' <[http://www.jkm.gov.my/prx.teleport.to/content.php?pagenam=akronim\\_dan\\_singkatan\\_dalam\\_pelaksanaan\\_undang-undang&lang=en](http://www.jkm.gov.my/prx.teleport.to/content.php?pagenam=akronim_dan_singkatan_dalam_pelaksanaan_undang-undang&lang=en)>.

Access under the country's laws; eliminate discrimination on the basis of the disabled; and educate and enhance society's awareness about the rights of the disabled.<sup>304</sup> Additionally, Persons with Disabilities Act 2008 was announced in 2008. Then, the government signed Convention on Rights of Persons with Disabilities, and ratified it in 2010. It can be deemed that the government's announcement of the National Policy for Disabled Persons in 2007 is the beginning of development of social welfare for the disabled.

## **(2) Relevant Legislations**

### **a. primary international agreement ratified by Malaysia:**

a.1 Convention on Rights of Persons with Disabilities: This Convention is an important international convention of the United Nation aiming to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The Convention was ratified by Malaysia in 2010.<sup>305</sup>

a.2 Cooperation within ASEAN: In 1993, The ASEAN Decade for Persons with Disabilities project was announced, and has been operated until present time. Its purpose is to raise equality and enhance role and participation of the persons with disabilities in the ASEAN community.<sup>306</sup> Then, Bali Declaration on the Enhancement of the Role and Participation of the Persons with Disabilities in ASEAN Community was also announced in 2011.<sup>307</sup>

### **b. primary domestic law of Malaysia:**

Persons with Disabilities Act 2008: This law intend to enhance and protect the rights of the disable, and enable them to enjoy their right to the fullest extent. Main essence of this Act includes a Council for Persons with Disabilities which is a group of persons attempting to make sure that the rights of people with disabilities are protected by giving

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<sup>304</sup> JKM, 'Policy for Persons with Disabilities' <<http://www.jkm.gov.my.prx.teleport.to/images/stories/pdf/dasarokuenglishtranslation.pdf>>.

<sup>305</sup> UN, 'Convention on the Rights of Persons with Disabilities' <<http://www.un.org/disabilities/convention/about.shtml>>.

<sup>306</sup> Department of Empowerment of Persons with Disabilities, 'ASEAN Decade for Persons with Disabilities B.E. 2554-2563' <[http://dep.go.th/sites/default/files/document/doc57\\_1\\_2.pdf](http://dep.go.th/sites/default/files/document/doc57_1_2.pdf)> p3.

<sup>307</sup> ASEAN, 'Bali Declaration on the Enhancement of the Role and Partipation of the Persons with Disabilities in ASEAN Community' <<http://www.asean.org/resources/item/bali-declaration-on-the-enhancement-of-the-role-and-participation-of-the-persons-with-disabilities-in-asean-community>>.

suggestions and advice to government relating to persons with disabilities' issues, helping people know more about people with disabilities, and improving the education system, promoting job opportunities and skills training for people with disabilities. good; and promoting good quality of life of people with disabilities by having Easy Access provided in the Act which is (1) Easy Access to places and services, (2) Easy Access to public transport, (3) Easy Access to education, (4) Easy Access to employment, (5) Easy Access to computer and IT, (6) Easy Access to cultural life, (7) Easy Access to hobbies and sports, (8) Easy Access to habilitation and rehabilitation, (9) Easy Access to health, (10) Easy Access to protection of persons with severe disabilities, and (11) Easy Access to help during emergency.<sup>308</sup>

### **3.4.3 Laws Relating to Social Welfare of Destitute Persons**

#### **(1) Introduction**

Destitute persons is one of important problems of Malaysia which might lead to more crucial social and economic problems; thus, Malaysian government wishes to put an end to it by helping them out of their destitute status via Destitute Persons Act which was enacted in 1977. The legal definition of "Destitute Persons" according to this Act means that '(a) any person found begging in a public place in such a way as to cause or to be likely to cause annoyance to persons frequenting the place or otherwise to create a nuisance; or (b) any idle person found in a public place, whether or not he is begging, who has no visible means of subsistence or place of residence or is unable to give a satisfactory account of himself'.<sup>309</sup> Beggar and homeless are also counted as destitute persons according to this meaning.

#### **(2) Relevant Legislations**

a. Destitute Persons Act 1977: This Act is an important act in dealing with destitute persons aiming to help them out of their current status by providing care and rehabilitation of them, and controlling vagrancy. Section 3 of this Act give power to officer to require a destitute person to reside in a welfare home. If that destitute person refuses to be taken or offers any resistance to the officer, such officer may call upon any police officer for assistance in the exercise of his powers. Under Section 4 of the Act, any destitute person also ables to voluntarily seek admission into a welfare home. About welfare home that the

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<sup>308</sup> Clarissa Chang, 'Person with Disabilities Act 2008 (Act 685) (Easy Access)' <[www.necicmalaysia.org/view\\_file.cfm?fileid=13](http://www.necicmalaysia.org/view_file.cfm?fileid=13)>.

<sup>309</sup> Destitute Persons Act 1977 (Act 183) Section 2.

destitute person shall reside in, Section 5 and 7 of the Act provides an establishment and management of welfare homes. The destitute person admitting to a welfare home may be discharged if the resident has found suitable employment to maintain himself, or there is any person willing or able to give the resident proper care and support.<sup>310</sup> Moreover, Section 11 of the Act provides penalty of any person who (1) refuses to be taken or offers any resistance to being taken into the charge of an officer, (2) escapes from an officer, (3) without permission leaves a welfare home, and (4) having been permitted to leave a welfare home for a specified time fails to return without reasonable cause at the expiration of such time.<sup>311</sup>

b. Care Centres Act 1993: This Act is an important law in dealing with management of care centres by providing for the registration, control and inspection of them. This law was enacted to replace the Destitute Persons (Welfare Homes) Rules 1981.<sup>312</sup> Main content of this Act provides that the Director General of the Department of Social Welfare may register or may refuse to register any care centre, imposes any conditions as he think fit and proper in management of any care centre, and may cancel the registration of any care centre.<sup>313</sup> Not only the Director General, but also the authorized officers under Section 12 of this Act may at any time enter and inspect any premises used as or for a registered care centre in order to ascertain that the health and well-being of the residents are satisfactorily taken care of; proper registers, records, and accounts are maintained; adequate and suitable equipment is provided; the premises are well maintained; adequate precautions are taken against fire and other occurrences that are likely to endanger the lives or health of the residents; the regulations and the conditions imposed under the Act have been, and are being complied with; and generally, the registered care centre is being operated and managed satisfactorily.<sup>314</sup> Additionally, This Act also imposes offences and penalties for any persons in relation to operation and management of the care centre who infringe the regulations of this Act.<sup>315</sup>

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<sup>310</sup> Destitute Persons Act 1977 (Act 183) Section 8.

<sup>311</sup> Destitute Persons Act 1977 (Act 183).

<sup>312</sup> Wendy LW Xin, Noralfishah Sulaiman and David Baldry, 'The Provision Structure of Residential Care Home for the Elderly in Malaysia: Policies Evolution, Regulations and Standards' <<http://eprints.uthm.edu.my/5426/>> p8.

<sup>313</sup> Care Centres Act 1993 (Act 506) Section 6, 7 and 11.

<sup>314</sup> Care Centres Act 1993 (Act 506) Section 13.

<sup>315</sup> Care Centres Act 1993 (Act 506) Section 18.

### 3.4.4 Laws Relating to Social Welfare of Older Persons

#### (1) Introduction

The legal definition of “Older Persons” of Malaysia means that ‘A person aged sixty years and above’. The current population of Malaysia in total is around 30 million which 5 percentage of them is persons aged sixty and above (around 1.5 million in number). The number of the elderly is increasing which in 2030, it might reach 15 percentage of the country’s population leading Malaysia to become an aging nation.<sup>316</sup> Hence, Malaysian government aware of the importance of this group of people, and in 1995 they announced National Policy for the Older Persons focusing to establish a society of the elderly who are contented, dignified, possessed of a high sense of self-worth, and optimising their potential, as well as to ensure that they enjoy all opportunities besides being given the care and protection as members of a family, society and the nation.<sup>317</sup> The Policy has been operated and developed until the present time which currently is the National Policy for the Older Persons 2011. Several laws and action plans were created from these policies. This Policy focuses on care, protection and development of the elderly. The current Policy was announced in 2011 together with Action Plan for Older Persons in order to provide efficient and effective services for the individual, family and society with an older person, and create a conducive environment for the older persons.<sup>318</sup> Furthermore, in 1992, the government declared October 1st as the International Day of Older Persons showing their genuine concern over the elderly.<sup>319</sup>

#### (2) Relevant Legislations

a. Care Centres Act 1993: This Act focuses on management of care centres by providing for the registration, control and inspection of them. This law was enacted to replace Rules for the Management of Older Persons’ Homes 1983, Rules for the Management of Older

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<sup>316</sup> WHO, ‘Aging and Health: Malaysia’ <[http://www.wpro.who.int/topics/ageing/ageing\\_fs\\_malaysia.pdf](http://www.wpro.who.int/topics/ageing/ageing_fs_malaysia.pdf)>.

<sup>317</sup> The Equal Rights Trust, ‘Washing the Tigers’ < <http://www.equalrightstrust.org/ertdocumentbank/Malaysia%20CR%201.pdf> > p.283.

<sup>318</sup> JKM, ‘Policy/Plan of Action’ <[http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=dasar\\_\\_\\_pelan\\_tindakan&lang=en](http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=dasar___pelan_tindakan&lang=en)>.

<sup>319</sup> Wendy LW Xin, Noralfishah Sulaiman and David Baldry, ‘The Provision Structure of Residential Care Home for the Elderly in Malaysia: Policies Evolution, Regulations and Standards’ <<http://eprints.uthm.edu.my/5426/>> p8.



Persons 1983, and Rules for the Management of Home for the Chronically ILL 1978.<sup>320</sup> Main content of this Act provides that the Director General of the Department of Social Welfare may register or may refuse to register any care centre, imposes any conditions as he think fit and proper in management of any care centre, and may cancel the registration of any care centre.<sup>321</sup> Not only the Director General, but also the authorized officers under Section 12 of this Act may at any time enter and inspect any premises used as or for a registered care centre in order to ascertain that the health and well-being of the residents are satisfactorily taken care of; proper registers, records, and accounts are maintained; adequate and suitable equipment is provided; the premises are well maintained; adequate precautions are taken against fire and other occurrences that are likely to endanger the lives or health of the residents; the regulations and the conditions imposed under the Act have been, and are being complied with; and generally, the registered care centre is being operated and managed satisfactorily.<sup>322</sup> Additionally, This Act also imposes offences and penalties for any persons in relation to operation and management of the care centre who infringe the regulations of this Act.<sup>323</sup>

b. Other laws relating to social welfare of older persons: Employment Act 1955: Employment (Part-Time Employees) Regulation 2010, Minimum Retirement Age Act 2012, Domestic Violence Act 1994, Pension Act 1980, etc.

### **3.4.5 Laws Relating to Social Welfare of Women and Family**

#### **(1) Introduction**

Malaysia pays a great deal of attention on development of women and family as can be seen that women and family are the main target groups of the Ministry of Women, Family and Community Development (including women, girls, single parents, victims of domestic violence, the poor and people with problems), and also are the main target groups

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<sup>320</sup> Wendy LW Xin, Noralfishah Sulaiman and David Baldry, 'The Provision Structure of Residential Care Home for the Elderly in Malaysia: Policies Evolution, Regulations and Standards' <<http://eprints.uthm.edu.my/5426/>> p11.

<sup>321</sup> Care Centres Act 1993 (Act 506) Section 6, 7 and 11.

<sup>322</sup> Care Centres Act 1993 (Act 506) Section 13.

<sup>323</sup> Care Centres Act 1993 (Act 506) Section 18.

of Department of Social Welfare. They focus on supporting gender equality, family unit and development of social welfare in order to create generous and harmonious society.<sup>324</sup>

Due to the existence of several problems about women rights within Malaysian society which most professed religion is Islam, and the development of society that women's roles in the society have been improved; the effort of Malaysian government in raising women rights has been increased. The announcement of National Policy on Women in 1989, as a guide for women's participation in the development process, can be obviously seen as the first step of the country's effort. This Policy helps enhance women's quality of life by overcoming challenges through poverty eradication and education, and it has been constantly operated and developed to become the current Policy in 2009. Its main purpose is to achieve gender equality and the enhancement of women's well-being. These principles of the Policy have been frequently developed and incorporated into several Action Plans of Malaysia, especially the 10<sup>th</sup> Malaysia Plan 2011-2015.<sup>325</sup> On international level, Malaysian government also ratified Convention on the Elimination of All Forms of Discrimination Against Women in 1995. Moreover, in 2001, Ministry of Women Affairs was founded with its aim to raise the status of women in the country, and it was restructured in 2004 to become the current Ministry of Women, Family and Community Development. On the same year, Malaysian's Constitution was also amended to prohibit discrimination in any law on the basis of gender. This can be seen clearly seen that Malaysian government has played their important role in supporting gender equality and raising women's quality of life.<sup>326</sup>

On the issue of social welfare of family, domestic violence get a lot of attainment as an important problem of the country, so Domestic Violence Act 1994 and Child Act 2001 were enacted to deal with this problem. Moreover, Human trafficking, especially prostitution of women and children also has been significant problems of Malaysia which has been considerably focused by the government, because Malaysia is a destination, source and transit country for women and children subjected to sex trafficking.<sup>327</sup> Therefore, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 was enacted by the government to deal with these problems. The Ministry of Women, Family and Community

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<sup>324</sup> School Malaysia, 'Department of Social Welfare' <[http://www.schoolmalaysia.com/resources/govn\\_social\\_welfare.php](http://www.schoolmalaysia.com/resources/govn_social_welfare.php)>.

<sup>325</sup> KPWK, 'Policy' <<http://www.kpwkm.gov.my/en/dasar1>>.

<sup>326</sup> Unicef, 'Women in Malaysia' <[http://www.unicef.org/malaysia/support\\_6066.html](http://www.unicef.org/malaysia/support_6066.html)>.

<sup>327</sup> US Department of State, 'Malaysia' <<http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226770.htm>>.

Development and the Department of Social Welfare are one of the important institutes dealing with this problem by development social welfare of women and family in the country, and also maintaining facilities to temporarily house trafficking victims.<sup>328</sup>

## **(2) Relevant Legislations**

### **a. primary international agreement ratified by Malaysia:**

a.1 Convention on the Elimination of All Forms of Discrimination Against Women: This United Nation Convention was ratified by Malaysia in 1995 aiming to eliminate discrimination against women in all forms and make the member states adopt the principle of equality in their legal systems. On the same year, Malaysia also agreed to the commitments set forth in the Beijing Platform for Action at the UN Fourth World Conference on Women with their commitments to promote equality, development and participation of women, protect the rights to health and education and well-being of women, and remove all legal obstacles to gender equality.<sup>329</sup>

a.2 Other international laws relating to social welfare of women and family: Convention on the Rights of Child, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, etc. Especially, ASEAN Ministerial Meeting on Transnational Crime (AMMTC), which is cooperation of ASEAN as one of the most regions with human trafficking problems, focuses on dealing with transnational crime including trafficking in persons.

### **b. primary domestic law of Malaysia:**

b.1 The Federal Constitution of Malaysia: The Constitution sets out the basic human rights standards about equality within Article 8 including gender equality.<sup>330</sup>

b.2 Domestic Violence Act 1994: An important Act of Malaysia provides for legal protection in situations of domestic violence and matters incidental thereto which needs to be considered along with the Penal Code.<sup>331</sup>

b.3 Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007: Because Malaysia is a destination, source and transit country for women and children

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<sup>328</sup> US Department of State 'Trafficking in Persons Report June 2016: Malaysia' <<https://www.state.gov/documents/organization/258880.pdf>> p. 257.

<sup>329</sup> UN Women, 'Overview of Convention' <<http://www.un.org/womenwatch/daw/cedaw/>>.

<sup>330</sup> The Federal Constitution of Malaysia, Article 8

<sup>331</sup> Domestic Violence Act 1994 (Act 521).

subjected to sex trafficking, this Act was enacted as an important Act of Malaysia aims to prevent and combat trafficking in persons and smuggling of migrants and to provide for matters connected therewith.<sup>332</sup>

b.4 Child Act 2001: Article 43 of this Act provides a specific criminal sentence of an offence against child under, for example, any person who sells, lets for hire or otherwise disposes of, or buys or hires or otherwise obtains possession of, a child with intent that the child is to be employed or used for the purpose of prostitution, either within or outside Malaysia, any person who procures a child for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia, any person who brings into Malaysia, receives or harbours a child knowing or having reason to believe that the child has been procured for purposes of prostitution or for the purposes of having sexual intercourse with any other person, either within or outside Malaysia, any person who detains a child against child's will, etc.<sup>333</sup> Moreover, This Act also provides Articles about children in need of care and protection,<sup>334</sup> children in need of protection and rehabilitation,<sup>335</sup> trafficking in and abduction of children including sentences and penalties,<sup>336</sup> and any relevant Institutions, such as, places of safety for children in need of care and protection, and places of refuge for children in need of protection and rehabilitation, etc.<sup>337</sup>

b.5 Other laws relating to social welfare of women and family: Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613), Criminal Procedure Code (Act 593), Immigration Act 1959/63 (Act 155), Penal Code (Act 574), Restricted Residence Act 1933 (Act 377), etc.

### **3.4.6 Laws Relating to Social Welfare of Disaster Victims**

#### **(1) Introduction**

The legal definition of "Disaster" of Malaysia means that 'An event that occurs suddenly, is complex and result in loss of life, damage to property or the environment, and affects the activities of local communities. This event requires operations involving

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<sup>332</sup> Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670).

<sup>333</sup> Child Act 2001 (Act 611) Article 43.

<sup>334</sup> Child Act 2001 (Act 611) Part 5.

<sup>335</sup> Child Act 2001 (Act 611) Part 6.

<sup>336</sup> Child Act 2001 (Act 611) Part 8.

<sup>337</sup> Child Act 2001 (Act 611) Part 9.

resources, equipment, frequency and energy of people from many agencies together with extensive and effective coordination, in which the actions are likely to require complex and long term actions'. The disaster can be divided into three levels classified by severity of the incident which are Level 1 Disaster: Local incidents that is manageable and not potential to spread. It is not very complex and may result in small loss of life and property, Level 2 Disaster: More serious incidents covering large areas or more than two Districts and has the potential to spread. Likely to result in loss of life and extensive destruction of property, and Level 3 Disaster: Incident emanating from Level 2 Disaster that is more complex or cover a larger area or more than two States.<sup>338</sup>

From the past to the present, disaster problem, especially natural disaster, namely flood and storm, has been a crucial problem of Malaysia. The government has established several measures to assist and help the victims of these incidents leading by Department of Social Welfare and National Security Council as main institutions in handling the disaster. National Security Council (NSC) Directive No.20: Policy and Mechanism of National Disaster Management and Relief was also announced by the National Security Council in 1997 as main instrument dealing with the disaster in order to fulfill the need to have an integrated system of disaster management system to deal with any kind of disaster, the need to have a sound system of coordination among agencies in search and rescue operations as well as relief and rehabilitation, and the need to have a specialised and highly skilled search and rescue team from previous disasters. This Directive also stipulates the meaning of "Disaster", types of disaster, several tools for handling disaster, such as, Disaster Management and Relief Committee and Disaster Operation Control Centre.<sup>339</sup>

## **(2) Relevant Legislations**

No relevant legislation

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<sup>338</sup> JKM, 'Disaster Victims' <[http://www.jkm.simple.my/content.php?pagename=mangsa\\_bencana&lang=en](http://www.jkm.simple.my/content.php?pagename=mangsa_bencana&lang=en)>.

<sup>339</sup> Mohd SBH Hussin, 'Disaster Management' <[https://docs.google.com/presentation/d/1KJtFuHwTlDtOJGsGbK13tP-OGKeo2RU\\_Xy6wYzQWGY/present?slide=id.i0](https://docs.google.com/presentation/d/1KJtFuHwTlDtOJGsGbK13tP-OGKeo2RU_Xy6wYzQWGY/present?slide=id.i0)> p. 6.

### 3.4.7 Governmental Authority

#### (1) Ministry of Women, Family and Community Development (KPWKM)

##### a. Administrative structure

There are six institutions under supervision of this Ministry which are<sup>340</sup> Department of Social Welfare, Department of Women's Development, National Population and Family Development Board, Social Institute of Malaysia, Non-Aligned Movement Institute for Empowerment of Women: NIEW, and National Welfare Foundation of Malaysia

##### b. Competent authority

This Ministry plays its main role and function on promoting and raising gender equality, family development and social welfare including the duties on laws and regulations revision in order to suggest new legislation affording better protection for the livelihood and development of women, family and the community as well as the establishment of effective monitoring and evaluating mechanism to improve the implementation of policies and programs.<sup>341</sup>

#### (2) Department of Social Welfare

##### a. Administrative structure

This Department is under the control of Ministry of Women, Family and Community Development. This Department is composed of the following 13 divisions:<sup>342</sup> Planning and Development Division (PP), Management Division (P), Children Division (KK), Quality Standard Division (QS), Community Service Order Division (PKM), OKU Development Department (JPOKU), Senior Citizen Division (WE), Productive Welfare Division (PW), Legislation and Enforcement Division (PU), Counseling and Psychology Division (K), Information Management Division (PM), Community Division (PK), and Policy and International Relations Division (DSA)

##### b. Competent authority

Its role and function covers prevention and rehabilitation services related to social issues and community development. There are six main target groups of the Department which are (1) children, (2) people with disability, (3) older persons, (4) destitute persons, (5)

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<sup>340</sup> KPWKM, 'Background' <<http://www.kpwkm.gov.my/en/latar-belakang>>.

<sup>341</sup> Wikipedia, Ministry of Women, Family and Community Development (Malaysia), <[https://en.wikipedia.org/wiki/Ministry\\_of\\_Women,\\_Family\\_and\\_Community\\_Development\\_\(Malaysia\)](https://en.wikipedia.org/wiki/Ministry_of_Women,_Family_and_Community_Development_(Malaysia))>.

<sup>342</sup> Department of Social Welfare, 'Organization Chart,' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=bFh1M09YbWZneGI2aZHTGhCTTNRdz09>>

family (women and girls, single parents, victims of domestic violence, the poor and people with problems), and (6) disaster victims.<sup>343</sup>

For children, The Department is responsible for the provision of care, protection and rehabilitation of children to ensure their well-being. The activities under the Department include guidance and counselling, formal education, religious and moral education, recreational activities, and health and medical services. Moreover, this Department also provides other services including protection and rehabilitation for children, rehabilitation programs for juveniles, District Child Welfare Committees for supervision of probation cases, care and protection for abused child and neglected and abandoned child, adoption, foster care application, child protection teams, child activity centres, and celebration of International Children's Day.

For people with disability: The Department main activity is rehabilitation services for people with disabilities aiming to assist the people with disabilities to be self-reliant and to achieve their full potential. The services under the Department include registration, financial aid, artificial aid and assistive devices, disabled workers allowance, work placement, institutional training and medical rehabilitation, community based-rehabilitation programs, and group homes.

For destitute persons: The Department focuses on those who can be defined as the destitute under the Destitute Persons Act 1977. It regularly and always performs ad-hoc operations to rescue the destitute and manages an institution that provides shelter and rehabilitation for the destitute.<sup>344</sup>

For older persons: The Department provides care and protection for older persons through institutional services which are health care, guidance, counselling, recreation and religious teachings, financial assistance, day care centre for older persons, homes for older persons without next of kin, and celebration of National Day for Older Persons.<sup>345</sup>

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<sup>343</sup> JKM, 'History,' <<http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=sejarah&lang=en>>.

<sup>344</sup> JKM, 'Destitute' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=Y0hIOFk4REdBa0hrRmxTeU95VzhZUT09>>.

<sup>345</sup> JKM, 'Older Persons Services' <[http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=perkhidmatan\\_warga\\_emas&lang=en](http://www.jkm.gov.my.prx.teleport.to/content.php?pagename=perkhidmatan_warga_emas&lang=en)>.

For family: The Department focuses on domestic violence issue by providing assistances in managing cases of domestic violence in accordance with the Domestic Violence Act 1994 and protection for victims of domestic violence.<sup>346</sup>

For disaster victims: The roles and responsibilities of the Department cover various stages including before, during and after the occurrence of disaster which focus on management of evacuation centres, assistance in the form of food, clothing and other necessities, registration of victims, and guidance and counselling.<sup>347</sup>

### **(3) Department of Women's Development**

#### **a. Administrative structure**

This Department is under the control of Ministry of Women, Family and Community Development. This Department is composed of the following 7 divisions: Director General Office, Deputy Director General Office, Women's Policy Implementation Division, Capacity Development Division, Coordination, Monitoring and Evaluation Division, Guidance and Counselling Division, and Management Services Division. Moreover there are 13 Development Office and 4 Women Shelter Home around the country.<sup>348</sup>

#### **b. Competent authority**

Its role and function is to achieve gender equality by enhancing the capability of women to contribute more to national development through the provision of support services and efficient and effective capacity building programs.<sup>349</sup> Its strategy is to plan, formulate and conduct programs and activities to strengthen women by increasing awareness about the importance of gender equality in all public development agencies and the private sector as well as the public, to enhance women's understanding of their rights, protect them from all forms of violence and build their capacity in all critical areas.<sup>350</sup>

### **(4) National Population and Family Development Board**

#### **a. Administrative structure**

This Board is under the control of Ministry of Women, Family and Community Development. This Board is composed of the following 16 divisions: There is Director

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<sup>346</sup> Nor ABH Jonit, 'Country Report - Malaysia' <[http://www.unafei.or.jp/english/pdf/RS\\_No69/No69\\_15PA\\_Jonit.pdf](http://www.unafei.or.jp/english/pdf/RS_No69/No69_15PA_Jonit.pdf)> p.119.

<sup>347</sup> JKM, 'Disaster Victims' <[http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=mangsa\\_bencana&lang=en](http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=mangsa_bencana&lang=en)>.

<sup>348</sup> JPW, 'Organization Chart' <[http://www.jpw.gov.my/web/home/article\\_view/112/71/](http://www.jpw.gov.my/web/home/article_view/112/71/)>.

<sup>349</sup> JPW, 'Vision, Mission and Objective' <[http://www.jpw.gov.my/web/home/article\\_view/110/83/](http://www.jpw.gov.my/web/home/article_view/110/83/)>.

<sup>350</sup> JPW, 'Strategy' <[http://www.jpw.gov.my/web/home/article\\_view/111/70/](http://www.jpw.gov.my/web/home/article_view/111/70/)>.



General Division supervising Deputy Director General (Policy) and Deputy Director General (Management). There are Legal Unit, Internal Audit Unit, Corporate Communication Unit, and Transformation and Delivery Management Unit directly controlled by Director General Division. There are Corporate Planning Sector, Family Services Sector, Policy and Outcome Evaluation Sector, Population and Family Research Sector and 15 State Office directly controlled by Deputy Director General (Policy). And there are Human Resource Management Sector, Management Services and Finance Sector, Information Technology Sector, and Business Development Unit directly controlled by Deputy Director General (Management).<sup>351</sup>

b. Competent authority

Its role and function is to contribute towards the development of quality population through the strengthening of families and promoting family wellbeing with its main function to advise the government on matters relating to policies and programs on population, family development and human reproduction.<sup>352</sup>

**(5) Ministry of Health**

a. Administrative structure

There are 12 institutions under supervision of this Ministry which are Development Division, Policy & International Relations Division, Legal Advisor Office, Internal Audit, Corporate Communication Unit, Integrity Unit, KPI & PEB Unit, Policy Surveillance Unit, Malaysia Health Promotion Board, Malaysia Healthcare Travel Council, Medical Device Authority, and Clinical Research Malaysia)<sup>353</sup>

b. Competent authority

This Ministry's main role and function relating social welfare is to set up One-Stop Crisis Centres in all major hospitals to handle survivors of domestic violence efficiently without having to go through much hassle queuing up with other patients.<sup>354</sup>

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<sup>351</sup> LPPKN, 'Organizational Structure' <<http://www.lppkn.gov.my/index.php/en/features/organizational-structure.html>>.

<sup>352</sup> LPPKN, 'NPFDB's Objectives' <<http://www.lppkn.gov.my/index.php/en/features/objektif-lppkn.html>>.

<sup>353</sup> MOH, 'Organization Chart' <<http://www.moh.gov.my/english.php/pages/view/3>>.

<sup>354</sup> Nor ABH Jonit, 'Country Report - Malaysia' <[http://www.unafei.or.jp/english/pdf/RS\\_No69/No69\\_15PA\\_Jonit.pdf](http://www.unafei.or.jp/english/pdf/RS_No69/No69_15PA_Jonit.pdf)> p.124.

## **(6) Department of Irrigation and Drainage Malaysia**

### **a. Administrative structure**

This Department is under the control of Ministry of Nature Resources and Environment. This Department is composed of the following 18 divisions: Flood Management Division, River Basin Management Division, Coaster Zone Management Division, Water Resources Management and Hydrology, Stormwater Management Division, Building and Infrastructure Division, Design and Dam Division, Quantity Surveying and Contract Administration Division, Special Project Division, Mechanical and Electrical Services Division, Corporate Division, Management Services Division, Human Capital Development Division, Humid Tropic's Centre, SMART Control Centre, Information Management Division, Performance Audit Division, and Facility and GIS Division<sup>355</sup>

### **b. Competent authority**

Its role and function relating to social welfare covers providing flood forecasting and warning services to the public.<sup>356</sup>

## **(7) Royal Malaysian Police**

### **a. Administrative structure**

There are 9 institutions under supervision of this Institution which are Management Department, Special Branch, Crime Investigation Office, KND/KA Department, Commercial Crime Investigation Department, Narcotics Department, Department of Strategic Resources and Technology, Integrity and Standard Compliance Department, Department of Crime Prevention and Community Safety, and Department of Investigation and Traffic Enforcement<sup>357</sup>

### **b. Competent authority**

This Institution's main role and function relating social welfare is to regularly conduct raids on brothels, and conduct an investigation on domestic violence case. Additionally, Anti-Vice Task Force was formed in order to play its direct role in targeting trafficking and prostitution networks. Both Institutes are under the control of the Ministry of Home Affairs.<sup>358</sup>

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<sup>355</sup> The Official Portal for Department of Irrigation and Drainage Malaysia, 'Divisions,' <<http://www.water.gov.my/home?lang=en>>

<sup>356</sup> Mohamad SB Khalid and Shazwani B Shafai, 'Flood Disaster Management in Malaysia: An Evaluation of the Effectiveness Flood Delivery System' <<http://www.ijssh.org/papers/488-V10012.pdf>>, p. 399.

<sup>357</sup> RMP, 'Jabatan' <<https://www.rmp.gov.my/>>.

<sup>358</sup> [humantrafficking.org, 'Government Agencies' <http://www.humantrafficking.org/countries/malaysia/government\\_agencies>.](http://www.humantrafficking.org/countries/malaysia/government_agencies)

Furthermore, the Royal Malaysian Police also established One stop centres for handling survivors of violence relating to sexual crime and also domestic violence in a number of District Police Headquarters. These centres is Victim Care Centres that will facilitate and assist the survivor to lodge reports and to further furnish information about his/her encounter, provide initial counselling sessions by qualified counsellors, and refer the case to appropriate agencies.<sup>359</sup>

#### **(8) Non-Aligned Movement Institute for Empowerment of Women (NIEW)**

##### **a. Administrative structure**

This Institute is under the control of Ministry of Women, Family and Community Development. This Institute has a Director as a head supervising Registrar Office, Office Secretary and Centre of Capacity Building. There are Academic Division, Administration Division, Asset Management Division, Finance Division, Information Technology Division, Public Relation Division, and Documentation & Resource Centre directly controlled by Registrar Office. And there are Centre of Economy & Politic, Centre of Education & IT, and Centre of Health & Violence against Women under Centre of Capacity Building with Principal Assistant Directors as supervisors of each Centre.<sup>360</sup>

##### **b. Competent authority**

Its role and function is to provide training, research and knowledge management in collaboration with the diplomatic community, international bodies, private sector, academia and civil society to ensure empowerment of women and achieve gender equality in Non-Aligned-Movement Member Countries.<sup>361</sup>

#### **(9) National Welfare Foundation of Malaysia**

##### **a. Administrative structure**

This Foundation is under the control of Ministry of Women, Family and Community Development. This Foundation has the Minister of Ministry of Women, Family and Community Development as a head of Board of Trustees supervising Chief Executive Officer of this Foundation. There are Fundraising and Corporate Communications Division, Social Development Division, Design and Development Division, Financial Division, and Arrangement Division directly controlled by the Chief Executive Officer<sup>362</sup>

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<sup>359</sup> Nor ABH Jonit, 'Country Report - Malaysia' <[http://www.unafei.or.jp/english/pdf/RS\\_No69/No69\\_15PA\\_Jonit.pdf](http://www.unafei.or.jp/english/pdf/RS_No69/No69_15PA_Jonit.pdf)> p.124.

<sup>360</sup> NIEW, 'Organization Structure' < <http://www.niew.gov.my/organizational-structure.html> >.

<sup>361</sup> NIEW, 'Mission' <<http://www.niew.gov.my/mission.html>>.

<sup>362</sup> Yayasan Kebajikan Negara, 'Carta Organisasi' <<https://www.yknm.org/carta-organisasi>>.

b. Competent authority

Its role and function is to promote the welfare and development of the people of Malaysia, especially the welfare of children and families, by helping improve the lives of those who need help through the provision of various financial and welfare services, health and education, and encouraging and assisting the development of voluntary welfare organization that strives to improve the quality of the Malaysians and have goals in line with the objective of the Foundation.<sup>363</sup>

**(10) Social Institute of Malaysia**

This Institute under supervision of the Ministry of Women, Family and Community Development has its main mission to promote sharing of knowledge and ideas, quality training, research and enhance the concept of lifelong learning in the areas of social policy and social development.<sup>364</sup>

**(11) Co-ordinating Council for the Protection of Children**

This Council, founded according to the provisions of the Child Act, is responsible for advising the government on the issue relating to child protection. The Council consists of representatives from various government agencies, for example, the Ministry responsible for child protection, the Ministry responsible for health, the Ministry responsible for education, the Ministry responsible for human resources, the Ministry responsible for information, the Attorney General, the Inspector General of Police, the Prison Department, the Department of Social Welfare, and persons with appropriate experience, knowledge and expertise on matters relating to the welfare and development of children, etc.<sup>365</sup>

**(12) National Advisory and Consultative Council for Children**

This Council play its role as an advisory committee advising the government on matters relating to the children's well-being and development, and policy direction and programs for children in line with the Convention on the Rights of the Child.<sup>366</sup>

**(13) Court for Children**

This Court was founded according to Article 11 of the Child Act 2001 for the purpose of hearing or disposing of any charge against child under the age of eighteen, or exercising any other jurisdiction conferred or to be conferred on Court for Children by or under this Act

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<sup>363</sup> Yayasan Kebajikan Negara, 'Objektif' <<https://www.yknm.org/objektif>>.

<sup>364</sup> ISM, 'ISM Vision and Mission' <<http://www.ism.gov.my/en/corporate/profile/ism-vision-and-mission>>.

<sup>365</sup> Child Act 2001 (Act 611) Part II.

<sup>366</sup> Unicef, 'The Launch of "Child Protection System in Malaysia"' <[http://www.unicef.org/malaysia/media\\_news14-the\\_launch-of\\_child\\_protections\\_system\\_in\\_malaysia.html#.Vmqlw0p97IU](http://www.unicef.org/malaysia/media_news14-the_launch-of_child_protections_system_in_malaysia.html#.Vmqlw0p97IU)>.

or by any other written law, except offences punishable with death. The quorum of the Court shall consist of a Magistrate and two advisors which one of the two advisors shall be a woman. The function of the advisors is to advise the Court, parent or guardian of the child. Furthermore, The Court shall sit either in a different building or room from that in which sittings of Courts other than the Court for Children are held, or on different days from those on which sittings of those other Courts are held. If the Court sits in the same building as other Courts, the Court shall have a different entrance and exit from those the other Courts to enable children to be brought to and from the Court with privacy. No person shall be present at any sitting of the Court except members and officers of the Court, the children who are parties to the case before the Court, their parents, guardians, advocates and witnesses, and other persons directly concerned in that case, and such other responsible persons as may be determined by the Court. The Court also provides restrictions on media reporting and publication. This reflects the government's acknowledgement that children, by virtue of their physical, mental and emotional immaturity, have unique needs compared to adults, so they need to have specific judicial proceedings apart from the adults.<sup>367</sup>

#### **(14) Rumah Kanak-Kanak**

This home for children was founded according to Article 54 of the Child Act 2001 in order to be a safe place that provide substitute care for children as well as encourage the growth and development of their health in a family with harmonious atmosphere. Nowadays, there are thirteen Rumah Kanak-Kanak operated across the country under the supervision of the Department of Social Welfare.<sup>368</sup>

#### **(15) Rumah Tunas Harapan**

This home is a home for children that serves care, love and protection in a family environment to children who cannot live with their parent. There are caretakers appointed by the Department of Social Welfare as foster parents giving the children care and protection. Besides the opportunity to grow up in a family setting, they are educated according to religious and cultural beliefs of each child. Nowadays, there are nine Rumah Tunas Harapan operated across the country under the supervision of the Department of Social Welfare and

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<sup>367</sup> Child Act 2001 (Act 611) Part IV.

<sup>368</sup> JKM, 'Children Home' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=aFizU3BRWG NKT2tIU2M4RWhvVzg0dz09>>.

with the cooperation of other government agencies, voluntary welfare organizations and local communities.<sup>369</sup>

#### **(16) Protection Home (Rumah Perlindungan)**

This home was found according to Article 42 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 as a safe haven providing protection to the victims of trafficking and smuggling of migrants while waiting for an investigation and an order from the court. This home also provides several services, namely, protection, food, medical facility, learning, training and vocational skills, counseling, and recreation to the residents. Nowadays, there are seven Protection Homes operated supervised by the Ministry of Women, Family, and Community Development which are four for women, one for men and two for child trafficking victims.<sup>370</sup>

#### **(17) Probation Hostel**

This shelter founded according to Article 61 of the Child Act 2001 is responsible for providing rehabilitation and education to children who are involved in crime and uncontrolled under the court order. This shelter is under the supervision of the Department of Social Welfare.<sup>371</sup>

#### **(18) Approved School**

This school was founded according to Article 65 of the Child Act 2001 aiming to provide education, training and detention of children who are involved in crime and uncontrolled under the Court for Children order by the written request of the parent or guardian to hold them in the Approved School. This school is under the supervision of the Department of Social Welfare.<sup>372</sup>

#### **(19) Taman Seri Puteri**

This shelter founded according to Article 55 of the Child Act 2001 is responsible for providing protection and rehabilitation of children who are exposed to moral danger or immorality by nurturing attitudes and values in accordance with the norms of society, and teaching them the necessary skills. The children will be hold in this shelter by the written

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<sup>369</sup> JKM, 'Rumah Tunas Harapan' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=a29MQ3BIVWJmMHBseWhKaVBDQWF2UT09>>.

<sup>370</sup> JKM, 'Rumah Perlindungan (RP) ATIP' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=eWdMdnViYVFzeHJYUHF5NlNONm5oQT09>>.

<sup>371</sup> JKM, 'Probation Hostels' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=SFBLR29KNzFwT2xQTmRWUVhjT2kzZz09>>.

<sup>372</sup> JKM, 'Sekolah Tunas Bakti' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=T3YxbnRkVk91cFVtRU9nOEpBUFU5dz09>>.

request of their parent or guardian to the Court for Children. This shelter is under the supervision of the Department of Social Welfare.<sup>373</sup>

## **(20) National Council for Persons with Disabilities**

This Council, established according to Article 3 of the Persons with Disabilities Act by the Ministry of Women, Family, and Community Development, is responsible for overseeing the implementation of national policies and plans of action relating to the disabled, and advising the government on matters relating to the disabled consisting of representatives from several agencies with the minister of the Ministry of Women, Family, and Community Development as a head.<sup>374</sup>

## **(21) Taman Sinar Harapan**

This institution under the supervision of the Department of Social Welfare is reserved for providing care, protection and rehabilitation of the disabled, especially with learning disabilities. Moreover, Taman Sinar Harapan is also a place for protection, especially for children with learning disabilities under the Child Act 2001. Currently there are seven Taman Sinar Harapan across the country.<sup>375</sup>

## **(22) Industrial Training and Rehabilitation Centre (PLPP)**

This institution under the supervision of the Department of Social Welfare provides services to the disabled through vocational training and medical rehabilitation.<sup>376</sup> Additionally, Job Coach Information Centre @ PLPP was also found here in order to provide an information of a suitable job, assist in job application process, assist in preparation of resumes, and provide support before and during employment to make sure that they will be able to stay in employment.<sup>377</sup>

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<sup>373</sup> JKM, 'Taman Seri Puteri' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=dS9TbzMvUDFmazl0aXVLOGpoRTVzQT09>>.

<sup>374</sup> JKM, 'Majlis Kebangsaan Bagi OKU' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=czJqRVdZKzZTNER3WWt4VHpERnBCdz09>>.

<sup>375</sup> JKM, 'Taman Sinar Harapan' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=WUZDTk1TUkszaGjiUUpKQVZeUlXZz09>>.

<sup>376</sup> JKM, 'Industrial Training and Rehabilitation Centre: PLPP' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=U2pEL2JKbHBxdzlvZFlYNmk4blZjQT09>>.

<sup>377</sup> JKM, 'Job Coach Information Centre @ PLPP' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=S092SklBbnFwanYwN1pwNzBmRkFqQT09>>.

### **(23) Taska OKU**

This child care centre found for disabled children which include Down's syndrome, autism, vision, hearing, physical and learning disabilities is expected to provide opportunities to children with disabilities to get early care and education and ease the burden of low-income families.<sup>378</sup>

### **(24) Desa Bina Diri**

This institution provides shelter and rehabilitation for the destitute. Destitute person is admitted to Desa Bina Diri through a court order or their voluntary decision under the Destitute Persons Act 1977. Those placed in the institution will be taught the appropriate skills such as sewing, carpentry, gardening, and others to prepare them to be returned to their family or community, and to become independent.<sup>379</sup> Nowadays, there are five Desa Bina Diri operated across the country.<sup>380</sup>

### **(25) National Advisory and Consultative Council for Older Persons**

This Council, established from the National Policy for the Older Persons, comprises of representatives from relevant Ministries, private sectors, non-governmental organizations and experts from related fields. The Council is chaired by the Minister of Women, Family and Community Development, and the secretariat for the Council is headed by the Department of Social Welfare playing its role in advising the government on the implementation of national policies and plans of action relating to the elderly.<sup>381</sup>

### **(26) Rumah Ehsan**

This shelter was established to provide care, treatment and protection to the elderly who are sick, homeless and without heirs, so they can continue to live in a comfortable and safe environment. Currently, there are two Rumah Ehsan operated across the country under the supervision of the Department of Social Welfare.<sup>382</sup>

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<sup>378</sup> JKM, 'Taska OKU' < <http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=c3NUcGFvaE9YTGw2Y0dVR3haa3lRQT09> >.

<sup>379</sup> JKM, 'Destitute' < <http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=Y0hIOFk4REdBa0hrRmxTeU95VzhZUT09> >.

<sup>380</sup> JKM, 'Desa Bina Diri' < <http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=Wm1WK1l5dnZkUGwvRU5MNkdtbm5zZz09> >.

<sup>381</sup> JKM, 'Policy/Plan of Action' < [http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=dasar\\_\\_pelan\\_tindakan&lang=en](http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=dasar__pelan_tindakan&lang=en) >.

<sup>382</sup> JKM, 'Rumah Ehsan' < <http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=ZTRiZ1J0cVBEEeXU3L2lZdUgwMlNEUT09> >.



### **(27) Rumah Seri Kenangan**

This home was established to provide care and protection to the elderly poor, so that they can live in peace and enjoy a good quality of life. Currently, there are nine Rumah Seri Kenangan operated across the country under the supervision of the Department of Social Welfare.<sup>383</sup>

### **(28) Activity Centre for Older Persons (PAWE)**

This centre is a place for seniors to perform daily activities in the community. It involves strategic cooperation between the Department of Social Welfare and other government agencies and non-governmental organizations. The objectives of PAWE is to Expand facilities for the welfare and development of senior citizens, provide space for senior citizens to feel appreciated through the sharing of experiences and skills, encourage the participation and cooperation of various parties, provide an alternative to the senior citizens group from the low-income families, and improve the quality of life of senior citizens.<sup>384</sup> Currently, there are fifty one PAWE operated across the country under the supervision of the Department of Social Welfare.<sup>385</sup>

### **(29) Ministry of Foreign Affairs – Social and Cultural Affairs Section**

This Section is the designated point of contact to other countries for trafficking issues.<sup>386</sup>

### **(30) Department of Islamic Development Malaysia**

This Department sets up temporary shelters for Muslim survivors of domestic violence throughout Malaysia. They also provide legal and counselling services to their clients.<sup>387</sup>

### **(31) National Security Council (MKN)**

This Council controlled by Office of the Prime Minister plays its role in drafting and ruling national safety policies. The Council is also an important institution on disaster's

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<sup>383</sup> JKM, 'Rumah Seri Kenangan' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=M2k3Q2xST0JJWE9Qa2Z2L253VDI2dz09>>.

<sup>384</sup> JKM, 'Activity Centre for Older Persons' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=aC90Vy81SVhKTEZDcVoxRE5JRzNRZz09>>.

<sup>385</sup> JKM, 'Senarai Pusat Aktiviti Warga Emas (PAWE)' <<http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=d21PdVdCTGpEWWJ3VTVSTjdQdWZldz09>>.

<sup>386</sup> [humantrafficking.org](http://www.humantrafficking.org), 'Malaysia' <<http://www.humantrafficking.org/organizations/167>>.

<sup>387</sup> Nor ABH Jonit, 'Country Report - Malaysia' <[http://www.unafei.or.jp/english/pdf/RS\\_No69/No69\\_15PA\\_Jonit.pdf](http://www.unafei.or.jp/english/pdf/RS_No69/No69_15PA_Jonit.pdf)> p.125.

management of Malaysia working together with police force and the army in time of crisis in analysing the situation, and transporting and assisting the victims<sup>388</sup>

### **(32) Disaster Management and Relief Committee**

This Committee was established at the the Federal, State and District Level by the National Security Council according to the National Security Council (NSC) Directive No.20 including representatives from several agencies as the Council's agency on disaster's management.<sup>389</sup>

### **(33) Disaster Operation Control Centre (DOCC)**

This centre will be set up when a disaster occurred. The Disaster Management and Relief Committee shall meet at the DOCC. Representatives from multi-agencies involved in disaster management shall be assigned to DOCC as liaison officers. Chairman of the DMRC will be the Chairman of DOCC. The DOCC will monitor progress on situation and ensure search and rescue, as well as relief efforts to victims are implemented in a coordinated, efficient and effective manner.<sup>390</sup>

### **(34) Village Development and Security Committee (JKKK)**

This Committee is responsible for managing and assisting the victims who do not move to evacuation centres, and do not register with the Department of Social Welfare.<sup>391</sup>

### **(35) Evacuation Centres**

This Centres spreading around the country managed by the Army of Malaysia is responsible for dealing with the diaster.

### **(36) Other governmental organizations relating to social welfare of disaster victims**

Royal Malaysia Police, Malaysia Armed Forces, Special Malaysia Disaster Assistance and Rescue Team (S M A R T), Malaysian Meteorological Service (M M S), Public Works Department (PWD), Civil Defense Department, Fire and Rescue Department, The People's Volunteer Corps (RELA Corps), local authorities, hospitals and international cooperation, etc. These organizations also take part in assisting, protecting, caring and relieving disaster victims.

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<sup>388</sup> MKN, 'MKN' <<https://www.mkn.gov.my/>>.

<sup>389</sup> Mohd SBH Hussin, 'Disaster Management' <[https://docs.google.com/presentation/d/1KJtFuHvTLDtOJGsGbk13tP-OGKeo2RU\\_Xy6wYzQWGY/present?slide=id.i0](https://docs.google.com/presentation/d/1KJtFuHvTLDtOJGsGbk13tP-OGKeo2RU_Xy6wYzQWGY/present?slide=id.i0)>, p. 15.

<sup>390</sup> National Security Council Putrajaya, 'Diaster Management in Malaysia: Landscape Review, Challenges and Prospects' <<http://www.met.gov.my/web/metmalaysia/publications/reports/presentation/paper/2011/disastermanagementmalaysia2011/presentation/64501/dmc5.pdf>>, p. 13.

<sup>391</sup> JKM, 'JKM's Assistance and Diaster Management' <[http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=pengurusan\\_bantuan\\_dan\\_bencana\\_jkm&lang=en](http://www.jkm.gov.my/prx.teleport.to/content.php?pagename=pengurusan_bantuan_dan_bencana_jkm&lang=en)>.

### 3.5 Law on Science, Technology, Innovation and Communication

#### 3.5.1 Introduction

With determination to upgrade itself to the advancement, Malaysia transformed from a country dependent on the production and export of primary commodities, e.g. agricultural products, to an emerging multi-sector economy over the period of decades. During the last decades of progresses, the country emerged as a leading exporter of high technology products and goods. Its current growth was almost exclusively driven by exports – particularly of electronics parts or equipments. In the recently years, the Malaysian economy recorded a credible and significant performance as the result of rendered governmental policies and strategies. The Malaysian government has modified and employed new strategic frameworks as follows in order to achieve in development of the country;

##### 1. Determination and Implementation of Science and Technology Policies

The policies rendered under Government Transformation Programme – hereinafter referred to as GTP, relating to science, technology and innovation aim to succeed in sustainable economic growth and stability.

##### a. Vision

Discovering, developing and utilizing science, technology and innovation (hereinafter referred to as “STI”) for knowledge generation, wealth creation and societal well-being towards achieving a high income advanced economy that is competitive, sustainable and inclusive.

##### b. Mission

To drive and manage STI for socioeconomic growth by intensifying creativity and innovation; strengthening market driven research and development (R&D); sourcing and diffusing new technology; developing and attracting talent; deepening STI awareness; and strengthening collaborations and partnerships.

##### c. Strategic Thrusts

1) Development for human resource in STI towards generating and enhancing knowledge/ innovation-led economy;

2) Harnessing and intensifying home grown R&D, technology acquisition and innovation;

- 3) Mainstreaming of STI, nurturing and acculturation of creative and innovation thinking;
- 4) Enhancement and strengthening of strategy by means of collaboration, cooperation and partnerships;
- 5) Strengthening of R&D centre funding;
- 6) Harnessing of commercialization and intellectual property for wealth creation and societal well-being;
- 7) Empowering society through innovation for sustainable development;
- 8) Internationalization; and
- 9) Strengthening the ability and capacity of MOSTI support services.

## 2. Government Schemes and Policy Mechanisms for Science and Technology Development in Malaysia

It has been well recognized that research and development as well as technological innovations are essential in the Malaysian government's strategy of sustainable development and knowledge-based economy. Recognizing that biotechnology has the potential as a new area of economic growth, the government has recently launched the National Biotechnology Policy. The policy outlines the future orientation and framework for the biotechnology industry and introduces attractive incentives that will accelerate Malaysian's foray into biotechnology.

Malaysia's Science and Technology development has thus been based on the S&T Policy of 1986 and the policy went through a review process in the year 2000, and this resulted in the formulation of the Second National Science and Technology Policy (hereinafter shall be referred as "STP II") launched in the year 2003. The SPT II seeks to set out in the path for science and technology to be the engine for the country's future growth and ensure national competitiveness. Moreover, the SPT II attempts to address the gaps in the national innovation system and will focus on strengthening research and technological capacity and capability with emphasis on commercialization of research outputs, strengthening institutional framework and management of S&T. Central to all these strategic thrusts is to bring government, industry, universities and public research institutions together in a synergistic partnership. The key priority areas of STP II, which have a strong influence on the innovation system, are stated below:

- 1) strengthening research and technological capacity and capability;
- 2) promoting commercialization of research output;
- 3) developing human resource capacity and capability;
- 4) promoting a culture for science, innovation and techno-entrepreneurship;

- 5) strengthening institutional framework and management for S&T and monitoring of S&T policy implementation;
- 6) ensure widespread diffusion and application of technology, leading to enhanced market-driven R&D to adapt and improve technologies;
- 7) build competence for specialization in key emerging technologies.

### 3. Strategic plan and policy implementation in science and technology development

Since 1988, the government has implemented a centralized grant system of financing science and technology (S&T) research in public institutions and research agencies. The financial support and monies shall be then in the authority and determination of MOSTI including evaluation which institutions or organizations will be eligible and granted the financial assistance.

#### 3.1 Intensification of Research in Priority Areas (IRPA)

This Fund was introduced in 1988 with the purpose of focusing research and development (R&D) activities on areas, which have the potential for enhancing the national socio-economic position. This is largest of the grants managed by MOSTI and mainly utilized by the public sector, universities and research institutes, however, a small proportion has also been given to the private sector. IRPA is considered as a key programme to catalyze the generation of new products, processes, services and solutions. A large portion of IRPA funding is allocated to activities that will lead to commercialization. In allocation grants for R&D projects, the granting agency adheres to several principles such as to:

- fund projects that are of high national priority and can be commercialized;
- fund projects that address the needs of Malaysian industry;
- encourage collaborative efforts among research institutions; and
- enhance R&D linkages between the public and private sectors.

#### 3.2 The Industry R&D Grant Scheme (IGS)

This scheme is administered by the MOSTI since 1996 to mobilize Malaysian companies towards enhancing their technological capabilities and innovation. This scheme is restricted to mainly Malaysian companies. The other objective of this scheme is to also foster public-private partnerships including universities. Between 1998 and 2003, 102 projects were approved worth RM 243 million. Most of the projects funded under the IGS scheme relate to high technology and advance science sectors.

### 3.3 Multimedia Super Corridor R&D Grant Scheme (MGS)

This scheme was launched in 1997 mainly to promote the development of R&D clusters. During the period 2002-2003, 29 projects worth RM 66.71 millions were approved. All in all, more than 50 projects worth RM 114 million were sanctioned from 1997. In 2003, some changes were made to make more companies eligible for seeking funding.

### 3.4 Technology Acquisition Fund (TAF)

This scheme was introduced in 1997. The TAF has been established by the Government to facilitate the acquisition of strategic and relevant technology by Malaysian companies to enhance their technology level and production processes and is operated by the Malaysian Technology Development Corporation. TAF provides partial funding to private sectors acquire and enhance their technological capacity. Under the TAF, these included the purchase of high-tech equipment and machinery, technology licensing, acquisition of patent rights, prototypes and design placement of Malaysians in foreign technology based companies/ Technology institutes. Under this scheme, 112 projects totaling RM 133.3 million had been approved since 1997. The TAF program is an important component in the technology development value chain as it provides the means for companies to undertake technology acquisition projects. In general, the TAF program has benefited many small and medium enterprises that have recognized the need to keep abreast of new technologies in order to compete globally.

### 3.5 Commercialization of R&D Fund (CRDF)

This scheme also came into operation in 1997 as other schemes which are managed by the Malaysian Technology Development Corporation to commercialize results of research and development. It provides three types of grants to following: (1) market survey and research; (2) product and process design including designs, prototypes, pilot plant, and (3) standardization measures including IPR. Industrial Training for Manufacturing and Services: in 1993, the Human Resource Development Fund (“HRDF”) was launched by the government to encourage training, retraining and skills upgrading in the private sector. Employers, in the manufacturing and service sectors who contribute to this fund are eligible to apply for grants to defray or subsidize the costs incurred in training and retraining their workforce. The National Vocational Training Council under MOSTI coordinates with the Ministry of Human Resource to establish the planning and development of a comprehensive system of vocational and industrial training programmes for all public agencies. Human

Resource Development Fund Programme: The Human Resource Development Fund Programme in S&T is another effort by the Government to strengthen the human capacity and capability for the enhancement of S&T in Malaysia. Among the objectives of this programme is to increase the critical mass of scientists and researchers of the country. It also aims at further strengthening the R&D functions in institutions of higher learning and public research institutions; and to enhance the country's competitiveness through the development of a trained, innovative and creative human resource.

### 3.6 Tax Incentives

The involvement of private companies in Research and Development (R&D) activities is crucial to the nation's industrialization drive. To further encourage the involvement of the private sector in carrying out R&D, the government of Malaysia has made available various types of incentives for R&D activities. Most of the R&D deductions and allowances are provided for under the Income Tax Act, 1967. The category of incentives being subject to the investment tax allowance is provided under the Promotion of Investment Act 1986 in which the R&D is also included.

## 4. Government Infrastructure

The Malaysian Technology Development Corporation or "MTDC" is a venture capital based company established by the Government and the private sector. MTDC's objectives were established by taking into consideration the need to improve the level of technologies of Malaysian companies. Thus, MTDC's main objective is to spearhead technology development in Malaysia through:

- commercialization of Research Results,
- development of Technology-based Companies and
- providing venture capital for science, technology and innovation

MTDC also collaborates with local institutions to set up incubation parks near the institutions to assist their startup ventures.

The Multimedia Development Corporation (MDC) was set up to promote the development of the ICT sector. MDC focus on ensuring the access of operation in order to reach the achievement of the Multimedia Super Corridor (MSC) as well as the collaboration of the companies hereunder. The MDC was set up to ensure that the necessary infrastructure (hard and soft) is in place to create vibrant ICT industry with the necessary linkages. Furthermore, the MDC also advises the Malaysian Government on legislation and

policies, development of MSC-specific practices, and setting breakthrough standards for multimedia operations. MDC promotes the MSC locally and globally, as well as support companies, which are locating within the MSC.

The Technology Park, Malaysia was set up to provide infrastructure and services for technological innovation and R&D to enable knowledge based enterprise to grow and compete in the global marketplace and to facilitate government and private sector smart partnership in technology development. The Park, located within the Multimedia Super Corridor, provides entrepreneurs with services on a one-stop basis and enabling tenants to reduce their overhead costs by sharing facilities. These parks are able to significantly improve the survival and growth prospects of new start-ups. As part of the national agenda to promote biotechnology BioNexus Malaysia, a network of centres of excellence throughout the country, comprising companies and institutions, which essentially specialize in specific biotech sub-sectors has been established. Initially, three centres of excellence will be established as part of the BioNexus.

More universities are now aware of commercialization issues and the need to develop relationship with the industry. Of late, there has been a shift towards applied research as more universities try to align their R&D towards the local and market needs. Many universities have set up technology transfer/ commercialization units to enable better liaison with the private sector and to facilitate business arrangements between the researchers and the private sectors, at the same time providing advisory on intellectual property issues. Some also provide advisory services to the private sector through consultancies based in available expertise at the universities. In order to disseminate research findings to the industry and the public, science and technology expositions are held, to display the research findings and provide opportunities for business-research matching.

#### 5. Research & Development Budget (R&D Budget)

The government through its development Plans from early 1990s accorded high priority to S&T and R&D. The gross expenditure on R&D as proportion GDP increased considerably during decade. Over the decades, the private sector has come to play an important role as an important factor in the Malaysian innovation system while, in 2002, the private industrial sector contributed 58% of GDP. According to the Malaysian S&T policy, the challenges of globalization and the increasing significance of knowledge-based industries, particularly ICT and electronics, has come into sharp focus in the S&T policy document.



## 6. Malaysian S&T System

The main drivers of Malaysian's scientific and technological efforts are the public sector research system comprising research institutions and universities; and the private industry sector. The bulk of the public sector R&D funding is managed by the Ministry of Science, Technology and Innovation, which funds research for the public sector, namely the Institutes of Higher Learning ("IHL") and Government Research Institutes ("GRIs").

### 3.5.2 Relevant Legislations

#### 1. The Academy of Sciences Malaysia Act 1994 (Act 542)<sup>392</sup>

Law in relation to science, technology and innovation in Malaysia is The Academy of Sciences Malaysia Act 1994, which has come into effect since 1994 and was amended in 2006. The Act provides for the establishment of the Academy of Sciences Malaysia which, for the purpose of being an academic center for the development in the matters of science, engineering, technology and innovations with the connection to the public interest, shall be a body corporate with perpetual succession, and which may sue and be sued in its corporate name and under the purpose of this Act, may enter into contracts and acquire, purchase, take and hold movable and immovable property or any interest therein vested in the Academy upon such terms as it deems fit.

Furthermore, under section 4 of this Act<sup>393</sup>, it refers to the object of the Academy. The object of the Academy is the pursuit, encouragement and maintenance of excellence in the fields of science, engineering and technology in order to promote the advancement of the art and practice of science, engineering and technology for the development of the nation and the benefit of mankind.

In addition to section 5<sup>394</sup>, there are statements regarding the functions of the Academy. To what extent, the functions of the Academy are (a) to promote and foster the development of science, engineering and technology; (b) to provide a forum for the interchange of ideas among scientists, engineers and technologists; (c) to promote national awareness, understanding and appreciation of the role of science, engineering and technology in human progress; (d) to promote creativity among scientists, engineers and technologists; (e) to promote national self-reliance in the field of science, engineering and

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<sup>392</sup> The Academy of Sciences Malaysia Act 1994 (ACT 524) Part II

<sup>393</sup> Ibid, section 4

<sup>394</sup> The Academy of Sciences Malaysia 1994 (Act 542) Part II, section 5

technology; (f) to act as a forum for maintaining awareness on the part of the Government of the significance of the role of science, engineering and technology in the development process of the nation and for bringing national development needs to the attention of the scientists, engineers and technologists and so on. As stated above, it could be clearly understood that the importance of friendly alliance amongst science, technology and engineering is recognized and appraised as a vital parts.

Section 6<sup>395</sup> of this Act mentions about the Council of the Academy. For the purpose of achieve the functions abovementioned of the Academy and managing the affairs related to the Academy, there is established a Council comprising (a) President, (b) the Vice-President, (c) the Secretary-General, (d) the Treasurer, and (e) twelve other members. Moreover, under section 7<sup>396</sup>, the functions of the Council are to formulate policy in relation to the functions of the Academy, to administer the affairs of the Academy, to appoint such officers or servants of the Academy as are necessary for the due administration of the Academy, to supervise and control its officers and servants, to administer the Fund granted and to convene general meetings of the Academy. With respect to appointment of committees under section 8<sup>397</sup>, the Council may appoint one or more committees as it considers necessary or expedient to assist it in the performance of its functions under this Act.

Furthermore, Part IV of the Act 542 introduces and gives details respecting financial matter. There is established a fund to be known as the Academy of Sciences Malaysian Fund which shall be administered by the Council under section 13<sup>398</sup>. Whereas section 14<sup>399</sup> indicates the sources of moneys to be paid into the Fund and section 15<sup>400</sup> states the purposes of the Fund. The Fund shall be used for the following purposes: (a) to make disbursements for salaries, allowances, expenses and other administrative costs incurred for the purposes of this Act; (b) to provide awards, fellowships, scholarships and research grants; (c) to sponsor research projects undertaken by scientific organizations, institutions of higher learning and individuals; (d) to publish and purchase magazines, books and articles relating

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<sup>395</sup> *ibid*, section 6

<sup>396</sup> *ibid*, section 7

<sup>397</sup> *ibid*, section 8

<sup>398</sup> The Academy of Sciences Malaysia 1994 (Act 542) Part II, section 13

<sup>399</sup> *ibid*, section 14

<sup>400</sup> *ibid*, section 15

to science, engineering or technology. Section 16<sup>401</sup> mentions the power to invest such moneys of the Fund, as are not immediately required to be expended under this Act, either (a) in any investments or securities authorized for the investment of trust funds by any written law for the time being in force; or (b) in such other investments or securities as the Council thinks fit.

## 2. Cyber laws in Malaysia

Malaysia has an overarching goal of becoming a sustainable developed nation by the year 2020 with a society that is stable, peaceful and resilient. Communication technology and ICT have come to play the important part of living in the new era. Thus, the legislation especially cyber laws and regulations has been raised as a method in order to monitor and control the cyber activities. The relevant laws are detailed as follows;

### a. The Communications and Multimedia Act 1998.<sup>402</sup>

The Communications and Multimedia Act 1998, which came into effect on the 1<sup>st</sup> of April 1999, is the main pillar for other cyber laws in Malaysia. It explains each roles and responsibilities of Internet Service Providers<sup>403</sup> and provides a regulatory framework to cater for the convergence of the telecommunications, broadcasting and computing industries, with the objective of, among others, making Malaysia a major global centre and hub for communications and multimedia information and content service. It also stated that there will be no filtering in accessing the Internet in Malaysia.<sup>404</sup>

The Malaysian Communications and Multimedia Commission was appointed on the 1<sup>st</sup> November 1998 as the sole regulator of the new regulatory regime. Although regulation in the form of licensing is provided for, one of the cornerstones of the new regulatory framework is self-regulation by the various industries, including the ICT and multimedia content industries.

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<sup>401</sup> *ibid*, section 16

<sup>402</sup> The Communications and Multimedia Act 1998

<sup>403</sup> Multimedia Development Corporation, 1996-2012. *Cyberlaw*. [Online] Available at: [www.mscmalaysia.my/why\\_msc\\_malaysia](http://www.mscmalaysia.my/why_msc_malaysia) [Accessed 12 December 2012].

<sup>404</sup> Multimedia Development Corporation, *Ibid*.

b. The Computer Crimes Act 1997<sup>405</sup>

The Computer Crime Act 1997, effective as of the 1<sup>st</sup> June 2000, created several offences relating to the misuse of computers. Amongst others, it deals with unauthorized access to computer material, unauthorized access with intent to commit other offences and unauthorized modification of computer contents. The Act also authorize the competent authorities to check, investigate and prosecute the offenders which would bring about the efficiency in law enforcement with simplification and acceleration in order to guarantee the liberty and social coexistence.

c. The Digital Signature Act 1997<sup>406</sup>

The Digital Signature Act 1997, enforced on the 1<sup>st</sup> of October 1998, is an enabling law that allows for the development of, amongst other e-commerce by providing an avenue for secure on-line transactions through the use of digital signatures. The Act has been enforced to help preventing on-line transaction fraud. It will provide both licensing and regulation of Certification Authorities (Certification Authority: CA). Signor identity certification and Digital Signature will be issued by CA. Digital Signature has become legally valid and enforceable as a traditional signature.<sup>407</sup>

d. The Copyright Act (Amendment) Act 1997

The Certification Authorities Act 1997, which amended the Copyright Act 1987, came into force on the 1<sup>st</sup> of April 1999<sup>408</sup>, due to the intention and policy of the Malaysian government to develop the country with the utilization of technology especially the advanced communication information which is considered as a driving force of the economy. This law purports to give protection and the exclusive right to the creator of any work. It is also an infringement of copyright to circumvent any effective technological measures aimed at restricting access to copyright works. These provisions are aimed at ensuring adequate protecting of intellectual property rights for companies involved in content creation in the ICT and multimedia environment.

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<sup>405</sup> The Computer Crime Act 1997

<sup>406</sup> The Digital Signature Act 1997

<sup>407</sup> National IT Council, 2012. *Cyberlaws in Malaysia*. [Online] Available at: [http://nitc.mosti.gov.my/nitc\\_beta/index.php/national-ict-policies/cyberlaws-in-malaysia](http://nitc.mosti.gov.my/nitc_beta/index.php/national-ict-policies/cyberlaws-in-malaysia) [Accessed 12 December 2012].

<sup>408</sup> The Copyright (Amendment) Act 1997

#### e. The Electronic Commerce Act 2006

The Electronic Commerce Act 2006, being effective on 19th October 2006, give a legal recognition of electronic messages in commercial transaction. It also provides how legal requirements can be fulfilled by using electronic messages. This acts also allow the use of electronic means and other related matters to facilitate commercial transactions.<sup>409</sup>

#### f. The Electronic Government Activities Act 2007

The Electronic Government Activities Act 2007 come into force on 1 January 2008.<sup>410</sup> Malaysian Government has enforce this act to do facilitation of electronic delivery on government services to the public. The use of the electronic messages to fulfill legal requirements and to enable and facilitate the dealings through the use of electronic means and other matters connected therewith. Thus, any information shall not be denied legal effect, validity or enforceability on the ground that it is wholly or partly in an electronic form or on the ground that the information is not contained in the electronic message that gives rise to such legal effect, but is merely referred to in that electronic message, provided that the information being referred to is accessible to the person against whom the referred information might be used.<sup>411</sup>

#### g. The Payment Systems Act 2003

The Payment Systems Act 2003 come into force on 1<sup>st</sup> November 2003. This act will be covering both operators' payments system and issuers of designated payment instruments (DPIs). It also contains provisions to allow the Central Bank of Malaysia to effectively perform its roles.<sup>412</sup> No person shall operate any payment system unless he has submitted to the Bank the documents and information as prescribed by the Bank, together with such fees as may be prescribed by the Bank, and has received a written notification from the Bank that such submission has been completely done.<sup>413</sup> However, the Bank may, by written notice, prohibit a person from operating any payment system where (a) the

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<sup>409</sup> Multimedia Development Corporation, 1996-2012. *Cyberlaw*. [Online] Available at: [www.mscmalaysia.my/why\\_msc\\_malaysia](http://www.mscmalaysia.my/why_msc_malaysia) [Accessed 12 December 2012].

<sup>410</sup> Multimedia Development Corporation, 1996-2012. *Cyberlaw*. [Online] Available at: [www.mscmalaysia.my/why\\_msc\\_malaysia](http://www.mscmalaysia.my/why_msc_malaysia) [Accessed 12 December 2012].

<sup>411</sup> The Electronic Government Activities Act 2007, Section 10.

<sup>412</sup> Bank Negara Malaysia, 2013. *Payment Systems Act 2003*. [Online] Available at: [http://www.bnm.gov.my/index.php?ch=ps\\_legal&pg=ps\\_legal\\_act&lang=en](http://www.bnm.gov.my/index.php?ch=ps_legal&pg=ps_legal_act&lang=en) [Accessed 3 3 2013].

<sup>413</sup> The Payment Systems Act 2003, Section 5 (1) and (3).

payment system is detrimental to the reliable, safe, efficient and smooth operation of the payment systems of Malaysia; or (b) the prohibition is in the interest of the public.<sup>414</sup>

#### h. The Personal Data Protection Act 2010

Personal Data Protection Act 2010, enforced on 1st January 2013, aims to regulate the processing of personal data in commercial transactions. However, this will not be applicable to the government both federal or states and data processed outside of Malaysia.<sup>415</sup> The essence of the Act is that, *in the case of personal data other than sensitive personal data, a data user shall not process personal data about a data subject unless the data subject has given his consent to the processing of the personal data. In the case of sensitive personal data, such data can be processed only with explicit consent or where such processing is necessary for the limited stated purposes set out in the Act, for example, to protect the vital interests of another person, for medical purposes, in connection with any legal proceedings, in the defence of legal rights for the administration of justice, etc. or where the information has already been made public by the data subject.*<sup>416</sup>

### 3.5.3 Governmental Authority

#### 1. Ministry of Science, Technology and Innovation

The Ministry of Science, Technology and Innovation was established in 1973 as the Ministry of Technology, Research and Local Government. In 1976, in line with new functions and responsibilities pertaining to environmental matters, the Ministry then changed its name to Ministry of Science, Technology and Environment (or known as “MOSTE”). On 27<sup>th</sup> March 2004, the Cabinet agreed to the restructuring of MOSTE and the name was changed to Ministry of Science, Technology and Innovation (or known as “MOSTI”) in order to lead the National ICT Development function, Multimedia and Innovation. In 2007, the science and technology function was divided into Biotechnology, ICT, Industry, Sea and Space, and S&T Services clusters.

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<sup>414</sup> The Payment Systems Act 2003, Section 5 (4).

<sup>415</sup> Secure IT Solution, 2011. *Personal Data Protection Act 2010 (Act 709) - A Summary*. [Online] Available at: <http://www.secure-it.com.my/index.php/component/content/article/34-the-company/146-personal-data-protection-act-2010-act-709-a-summary.html> [Accessed 19 April 2017].

<sup>416</sup> Secure IT Solution, 2011. *Personal Data Protection Act 2010 (Act 709) - A Summary*. [Online] Available at: <http://www.secure-it.com.my/index.php/component/content/article/34-the-company/146-personal-data-protection-act-2010-act-709-a-summary.html> [Accessed 19 April 2017].

#### a. Administrative Structure

The MOSTI, administrated by the Minister, monitors a number of institutions that are responsible in providing technical services to the government and the public. There are various agencies under supervision of the Ministry as follows;

- 1) Malaysian Centre for Remote Sensing (MACRES) with the role and responsibilities of remote sensing, telemetry, geographic information system (GIS) and research. The headquarter (HQ) is located in Kuala Lumpur and ground receiving station in Temerloh, Pahang.

- 2) National Sciences Centre with the role and responsibilities with regard to promoting awareness, appreciation, interest and understanding of science and technology. The headquarter is located in Bukit Kiara, Kuala Lumpur.

- 3) National Oceanography Directorate with the role and responsibilities with regard to marine science and oceanography and the headquarter is located in Putrajaya.

- 4) National Space Agency with the role and responsibilities with research and development of space science and the headquarter is located in Putrajaya.

- 5) Department of Chemistry Malaysia with the role and responsibilities with chemical analysis, investigation/forensic and consultant services and the headquarter is located in Petaling Jaya.

- 6) Malaysia Nuclear Agency with role and responsibilities in relation to nuclear technology research and development.

- 7) Malaysian Meteorological Department with the role and responsibilities in respect of national meteorological monitoring services and natural disaster warning.

- 8) Department of Standards Malaysia with the role and responsibilities in relation to national standards and accreditation body. In other words, the Department spearhead the Standards Component of the Strategic Reform, Initiatives-Competition Standards & Liberalisation (SRI-CSL) under the Economic Transformation Programme, to primarily enhance the quality of Malaysian products and services for both the nation as well as the world. The headquarter is located in Cyberjaya, Selangor.

- 9) Atomic Energy Licensing Board with the role and responsibilities regarding controlling and supervision of radioactive material usage in industries. The board also checks and enforces safety rules and the headquarter is located in Dengkil, Selangor.

- 10) Malaysian Global Innovation and Creativity Centre with the mission to catalyze the entrepreneurial ecosystem in Malaysia, bringing together the abundant resources from partners and communities alike, and to develop entrepreneurs of enduring, high growth startups that will make a positive impact at a regional or global scale. The headquarter in Cyberjaya, Salangor.

#### b. Competent authority

The objectives behind the formation of the Ministry is to improve competitiveness in the fields of science and technology through the generation of knowledge and sustainable development and to render upcoming policies, strategies and administrative matters regarding S&T and innovation. The Ministry is looking to create a conducive environment for science and technology as a means of generating knowledge, wealth and life through sustainable development. Therefore, the Ministry is responsible for competency and capability in Science & Technology (S&T), including relevant activities to enhance and strengthen the proficiency in R&D area in order to increase national competitiveness in maintaining commitment towards environmental management.

MOSTI is in charge of rendering and presenting the policies and plans for the sake of scientific and technological improvement in Malaysia and create the good learning environment for developing a robust science system. The good policies and strategies would lead to the achievement and success of economic content of the whole country, such as creating the good living, generating knowledge and supporting education. What's more, MOSTI is responsible for raising and encouraging awareness of the importance of science, technology and innovation and giving guidance to the nation.

Additionally, MOSTI's efforts and initiatives in discharging its role and respect number of plans and policy documents. These include the Third Output (OPP3), Eighth Malaysian Plan (8MP), the Second Industrial Master S&T Policy and the Technology Action Plan (TAP). From these number documents, MOSTI is playing an important role in realigned the council strategy to achieve the development of knowledge-based economy. By supporting with fiscal and financial incentives to private sector, MOSTI also forge synergistic partnership amongst the various public and private sectors to strengthening the country's research and capability and focus on high-tech and knowledge-intensive action.

Moreover, the National Council for Scientific Research and Development ("NCSRD") is established as an advisory body comprising high-level representatives from the public and private sectors. The main function and duty of the NCSRD is to provide advices and render directions on S&T policies and S&T priorities. Meanwhile, MOSTI acts as the secretariat to NCSRD. The Council is chaired by the Chief Secretary to the government. Representations include the universities and public research institute and key central government agencies, and the private sectors. The council meets three to four times a year to deliberate on matters related to research and scientific advancement including any other benefits gained.

Furthermore, MOSTI also provides funds and financial grants for research. Funds and financial grants available are placed and granted under specialized schemes and purposes, such as science funds, technological funds (pre-commercialization and IP acquisition funds),



innovative funds (enterprise innovation and community innovation fund), eHCD (human capital development funds) and the Brain Gain funds.<sup>417</sup>

### 3.6 Environmental Law

#### 3.6.1 Introduction

Malaysia is now facing a variety of environmental problems including deforestation and pollution. In 2008, there was a survey findings prepared by Centre for Marine and Coastal Studies which indicated that it has been estimated that some 30 percent of the coastline is subject to varying degrees of erosion<sup>418</sup>. In addition, Malaysia's deforestation rate is accelerating faster than that of any other tropical country in the world, according to data from the United Nations. It shows that Malaysia's annual deforestation rate jumped almost 86 percent between the 1990-2000 period and 2000-2005. In total, Malaysia lost an average of 140,200 hectares—0.65 percent of its forest area—per year since 2000. For comparison, the Southeast Asian country lost an average of 78,000 hectares, or 0.35 percent of its forests, annually during the 1990s. Declination of forest cover in Malaysia has been resulted primarily from urbanization, agricultural fires, and forest conversion for oil-palm plantations and other forms of agriculture<sup>419</sup>.

#### 3.6.2 Relevant Legislations

##### a. Environmental Quality Act 1974

This Act is the first major environmental law in Malaysia. It was passed in 1974 to curb pollution by effluents from the country's rubber and palm oil sectors, while older regulations such as those related to forestry, land use and soil conservation were updated by the government<sup>420</sup>. The Act contains sections directly related to air pollution noise pollution, pollution of inland water, oil pollution, crude palm oil, raw natural rubber and others and it also made it mandatory for 19 categories of activities as follows to have

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<sup>417</sup> Epicos, Ministry of Science, Technology and the Environment (Malaysia), available at <http://www.epicos.com/EPCompanyProfileWeb/GeneralInformation.aspx?id=18484>, retrieved 06 May 2017.

<sup>418</sup> J. E. Ong, "Vulnerability of Malaysia to Sea Level Change" , (Centre for Marine and Coastal Studies , University Sains Malaysia , 2008) , p.1.

<sup>419</sup> <<http://rainforests.mongabay.com/20malaysia.html>>, (accessed December 1, 2015).

<sup>420</sup> Jing Huang, Shreekant Gupta (editors), Environmental policies in Asia: perspectives from seven Asian countries, (Singapore : World Scientific Publishing Co. Pte. Ltd.,2014), p.109.

environmental impact assessment reports (EIAs) submitted and approved by the Department of Environment (DOE) before any activity can be carried out<sup>421</sup>.

### 1. Agriculture

(a) Land development schemes covering an area of 500 hectares or more to bring forest land into agriculture production.

(b) Agriculture programmes necessitating the resettlement of 100 families or more.

(c) Development of agricultural estates covering an area of 500 hectares or more involving changes in type of agricultural use.

### 2. Airport

(a) Construction of airports (having an airstrip of 2,500 meters or longer).

(b) Airstrip development in state and national parks.

### 3. Drainage and Irrigation

(a) Construction of dams and man-made lakes and artificial enlargement of lakes with surface areas of 200 hectares or more.

(b) Drainage of wetland, wild-life habitat or of virgin forest covering an area of 100 hectares or more.

(c) Irrigation schemes covering an area of 5,000 hectares or more.

### 4. Land Reclamation

Coastal reclamation involving an area of 50 hectares or more.

### 5. Fisheries

(a) Construction of fishing harbours.

(b) Harbour expansion involving an increase of 50 per cent or more in fish landing capacity per annum.

(c) Land based aquaculture projects accompanied by clearing of mangrove swamp forests covering an area of 50 hectares or more.

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<sup>421</sup> *Ibid*, pp.124-125.

## 6. Forestry

(a) Conversion of hill forest land to other land use covering an area of 50 hectares or more.

(b) Logging or conversion of forest land to other land use within the catchments area of reservoirs used for municipal water supply, irrigation or hydropower generation or in areas adjacent to state and national parks and national marine parks.

(c) Logging covering an area of 500 hectares or more.

(d) Conversion of mangrove swamps for industrial, housing or agricultural use covering an area of 50 hectares or more.

(e) Clearing of mangrove swamps in islands adjacent to national marine parks.

## 7. Housing

Housing development covering an area of 50 hectares or more.

## 8. Industry

(a) Chemical -Where production capacity of each product or of combined products is greater than 100 tonnes / day.

(b) Petrochemicals -All sizes.

(c) Non-ferrous -Primary smelting:

Aluminium -all sizes

Copper -all sizes

Others -producing 50 tonnes/day and above of product.

(d) Non-Metallic –

Cement - for clinker through put of 30 tonnes/hour and above. –

Lime - 100 tonnes/day and above burnt lime rotary kiln or 50 tonnes/day and above vertical kiln.

(e) Iron and Steel - Require iron ore as raw materials for production greater than 100 tonnes/ day; or Using scrap iron as raw materials for production greater than 200 tonnes/day

(f) Shipyards - Dead Weight Tonnage greater than 5000 tonnes.

(g) Pulp and Paper Industry - Production capacity greater than 50 tonnes/day.

#### 9. Infrastructure

(a) Construction of hospitals with out fall into beachfronts used for recreational purposes.

(b) Industrial estate development for medium and heavy industries covering an area of 50 hectares or more.

(c) Construction of expressways.

(d) Construction of national highways.

(e) Construction of new townships.

#### 10. Ports

(a) Construction of ports

(b) Port expansion involving an increase of 50 per cent or more in handling capacity per annum

#### 11. Mining

(a) Mining of minerals in new areas where the mining lease covers a total area in excess of 250 hectares.

(b) Ore processing, including concentrating for aluminium, copper, gold or tantalum.

(c) Sand dredging involving an area of 50 hectares or more.

#### 12. Petroleum

(a) Oil and gas fields development.

(b) Construction of off-shore and on-shore pipelines in excess of 50 kilometres in length.

(c) Construction of oil and gas separation, processing, handling, and storage facilities.

(d) Construction of oil refineries.

(e) Construction of product depots for the storage of petrol, gas or diesel (excluding service stations) which are located within 3 kilometres of any commercial, industrial or residential areas and which have a combined storage capacity of 60,000 barrels or more.

### 13. Power Generation and Transmission

(a) Construction of steam generated power stations burning fossil fuels and having a capacity of more than 10 megawatts.

(b) Dams and hydroelectric power schemes with either or both of the following:

(i) dams over 15 meters high and ancillary structures covering a total area in excess of 40 hectares;

(ii) reservoirs with a surface area in excess of 400 hectares.

(c) Construction of combined cycle power stations. (d) Construction of nuclear-fueled power stations.

### 14. Quarries

Proposed quarrying of aggregate, limestone, silica quartzite, sandstone, marble and decorative building stone within 3 kilometres of any existing residential, commercial or industrial areas, or any area for which a licence, permit or approval has been granted for residential, commercial or industrial development.

### 15. Railways

(a) Construction of new routes.

(b) Construction of branch lines.

### 16. Transportation

Construction of Mass Rapid Transport projects.

### 17. Resort and Recreational Development

(a) Construction of coastal resort facilities or hotels with more than 80 rooms.

(b) Hill station resort or hotel development covering an area of 50 hectares or more.

(c) Development of tourist or recreational facilities in national parks.

(d) Development of tourist or recreational facilities or islands in surrounding waters which are gazetted as national marine parks.

### 18. Waste Treatment and Disposal

(a) Toxic and Hazardous Waste

- (i) Construction of incineration plant
- (ii) Construction of recovery plant (off-site)
- (iii) Construction of wastewater treatment plant (off-site)
- (iv) Construction of secure landfill facility (v) Construction of storage facility (off-site)

(b) Municipal Solid Waste

- (i) Construction of incineration plant
- (ii) Construction of composting plant
- (iii) Construction of recovery/recycling plant
- (iv) Construction of municipal solid waste landfill facility

(c) Municipal Sewage

- (i) Construction of wastewater treatment plant
- (ii) Construction of marine out fall.

19. Water Supply

(a) Construction of dams, impounding reservoirs with a surface area of 200 hectares or more.

(b) Groundwater development for industrial, agricultural or urban water supply of greater than 4,500 cubic meters per day.

Besides the pollution control provisions, this act also shows both domestic and cross-border hazardous waste management regulations. However, any detail of such managed measures shall be prescribed in the subsidiary legislation.

1. Pollution control

This point seems to introduce the concept of permissible level of pollution<sup>422</sup>. Section 21 of the Act provides that the Minister of Natural Resources and Environment may, after consultation with the Environmental Quality Council, may by regulations specify the acceptable conditions for the emission, discharge or deposit of environmentally hazardous

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<sup>422</sup> Ichiro Kato, Nobuo Kumamoto , William H. Matthews, Environmental Law and Policy in the Pacific Basin Area , (Japan : University of Tokyo Press , 1981) , p.17.

substances, pollutants or wastes or the emission of noise into any area, segment or element of the environment and may set aside any area, segment or element of the environment within which the emission, discharge or deposit is prohibited or restricted.

This section actually contains two points –

The first point deals with the prescription of minimum ecostandards – the level of permissible pollution, beyond which pollution becomes an offense.

The second point deal with absolute and conditional restrictions in relation to certain areas. One such example would be the rise of industries (particularly, palm oil mills) in the vicinity of catchment areas. These areas will be described as absolutely free from any activities that may pollute, or the industries in these areas will be subject to stringent conditions and very high fees<sup>423</sup>.

Where industries do not have the capability or the technology to meet the standards prescribed by the minister under section 21, then they will have to be licensed to emit or discharge a greater volume of wastes or noise. Section 18 (1) provides that the minister, after consultation with the Council may by order prescribe the premises the occupation or use of which by any person shall, unless he is the holder of a licence issued in respect of those premises, be an offence under this Act. The Object of this section is to encompass each industry stage by stage , if it established by facts and evidence that most of them damage riverine resources , then the minister may prescribe that all premises carrying out palm oil milling will be considered “prescribed premises”. This automatically brings the licensing requirement into play. Through the license, relevant controls are exercised<sup>424</sup>.

### 1.1 Air pollution

Section 22 of the Act provides that no person shall, unless licensed, emit or discharge any environmentally hazardous substances, pollutants or wastes into the atmosphere in contravention of the acceptable conditions specified under section 21. Any person who contravenes such conditions shall be guilty of an offence.

The emission standards for stationary sources based on the Environmental Quality (Clean Air) Regulations 1978 stipulate a standard value for each emission source for

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<sup>423</sup> *Ibid.*

<sup>424</sup> *Ibid.*, p.17-18.

four categories of pollutants<sup>425</sup>: black smoke, dust or solid particles, metals or metallic compounds<sup>426</sup>, and gaseous substances<sup>427</sup>.

## 1.2 Noise pollution

Section 23 of the Act provides that no person shall, unless licensed, emit or cause or permit to be emitted any noise greater in volume, intensity or quality in contravention of the acceptable conditions specified under section 21. Any person who contravenes such conditions shall be guilty of an offence.

DOE prepares recommendations upon which acceptable noise limits could be specified. In instances of new noise sources or projects, compliance to these limits may be made mandatory using legislative instruments available to DOE, and other authorities such as local authorities and so on<sup>428</sup>.

## 1.3 Inland waters pollution

Section 25 of the Act provides that No person shall, unless licensed, emit, discharge or deposit any environmentally hazardous substances, pollutants or wastes into any inland waters in contravention of the acceptable conditions specified under section 21. Any person who contravenes such conditions shall be guilty of an offence.

The regulations that directly affect the industrial activities of Japanese companies are the wastewater standards provided for in the Environmental Quality (Sewage and Industrial Effluents) Regulations 1979. These standards concern not only industrial wastewater; the same limit values apply to domestic wastewater as well. They are prescribed as a set of nationally uniform standards divided into two categories: Standard A applies to areas upstream from drinking water intake points, and Standard B applies to areas downstream from drinking water intake points. Each standard covers 23 parameters,

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<sup>425</sup> Ministry of the Environment, Government of Japan, Overview of Environmental Issues and Environmental Conservation Practices in Malaysia <<https://www.env.go.jp/earth/coop/oemjc/malay/e/malaye1.pdf>>, p.33 (accessed December 2 2015).

<sup>426</sup> The category of metals or metallic compounds includes seven substances, such as mercury, cadmium, and zinc. For those types of metals or metallic compounds, the regulations apply to all industries.

<sup>427</sup> The gaseous substances category includes nine substances, such as acid gas, chlorine gas, hydrogen sulfide, and nitrogen oxides. For chlorine gas, hydrogen chloride, and hydrogen sulfide, the regulations apply to all emission sources.

<sup>428</sup> Department of Environment, Ministry of Natural Resources and Environment of Malaysia the Planning Guidelines for Environmental Noise Limits and Control, 2007, p. 4.



including general parameters such as temperature, pH, and suspended solids (SS), as well as BOD, chemical oxygen demand (COD), and various types of heavy metals<sup>429</sup>.

#### 1.4 Oil pollution

Section 27 of the Act provides that no person shall, unless licensed, discharge or spill any oil or mixture containing oil into Malaysian waters in contravention of the acceptable conditions specified under section 21. Any person who contravenes such conditions shall be guilty of an offence.

However, section 28 stipulates the special defences of delinquents who commit section 27 that Where any person is charged for any offence under section 27 it shall be a defence to prove that such discharge or spillage was—

(a) for the purpose of securing the safety of the vessel;

(b) for the purpose of saving human life;

(c) the result of damage to the vessel and that all reasonable steps were taken to prevent, to stop or to reduce the spillage;

(d) the result of a leakage, which was not due to want of care, and that all reasonable steps have been taken to stop or reduce the leakage; or

(e) the result of an effluent produced by operation for the refining of oil, and that all reasonable steps had been taken to eliminate oil from the effluent and that it was not reasonably practicable to dispose of the effluent otherwise than by discharging or spilling it into the Malaysian waters

#### 2. Environmental Impact Assessment (EIA)

Section 34 A provides that The Minister, after consultation with the Environmental Quality Council, may by order prescribe any activity which may have significant environmental impact as “prescribed activity”. Any person intending to carry out any of the prescribed activities shall, before any approval for the carrying out of such activity is granted by the relevant approving authority, submit a report to the Director General of Environmental Quality. The report shall be in accordance with the guidelines prescribed by the Director General and shall contain an assessment of the impact such activity will have or

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<sup>429</sup> Ministry of the Environment, Government of Japan, Overview of Environmental Issues and Environmental Conservation Practices in Malaysia <<https://www.env.go.jp/earth/coop/oemjc/malay/e/malaye1.pdf>>, p. 24 (accessed December 2 2015).

is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce or control the adverse impact on the environment. If the Director General on examining the report is of the opinion that the report satisfies the guideline prescribed and that the measures to be undertaken to prevent, reduce or control the adverse impact on the environment are adequate, he shall approve the report, with or without conditions attached thereto.

EIA requirements apply to 19 categories of activities, such as Construction of dams, ports, resorts or Housing development and so on, as prescribed in the schedule appended to the Environmental Quality (Environmental Impact Assessment) Order 1987<sup>430</sup>.

### 3. Hazardous waste management

This act stipulates the detrimental waste control or management. However, the Act does not include solid waste management because it is prescribed by the Solid waste and public cleaning management 2007.

#### 3.1 Inland hazardous waste management

Section 34 B (1) (a) shows that no person shall place, deposit or dispose of, or cause or permit to place, deposit or dispose of, except at prescribed premises only, any scheduled wastes on land or into Malaysian waters. At present, the Environmental Quality (Scheduled wastes) Regulations 2005 provides type of any scheduled wastes which are prohibited to place or dispose of them on land or into waters.

“ Scheduled wastes” means a material or article containing a chemical, or mixture of chemicals, exceeding the threshold concentration and threshold quantity which is : organic in nature; resistant to degradation by chemical, physical or biological means; toxic to humans, animals, vegetation or aquatic life; bio-accumulative in humans, flora and fauna. There are 77 types of scheduled wastes listed under the First Schedule of the Regulations and they can be divided into five categories namely<sup>431</sup>;

#### **Scheduled Waste**

- 1) SW 1 Metal and metal bearing wastes (10 types)
- 2) SW 2 Wastes containing principally inorganic constituents which may contain metallic organic materials (7 types)

<sup>430</sup> *Ibid.*, p. 45-46.

<sup>431</sup> AEC Business Support Center, Office of the International Trade Promotion at Kuala Lumpur, Malaysia, “Environmental management”, <[http://www.ditp.go.th/contents\\_attach/92458/92458.pdf](http://www.ditp.go.th/contents_attach/92458/92458.pdf)> ,p.7(accessed December 11,2015).

- 3) SW 3 Wastes containing principally organic constituents which may contain metals and inorganic materials (27 types)
- 4) SW 4 Wastes which may contain either inorganic or organic constituents (32 types)
- 5) W 5 Other wastes (1 type)

However, there are many types of wastes prescribed in the schedule including hazardous chemicals and Electronic wastes (E-waste)<sup>432</sup> under SW 1. There is a set of guidelines on it, known as the Guidelines for the Classification of Used Electrical and Electronic Equipment, has been issued by DOE. These Guidelines were issued in January 2008 and they have identified the different categories of E-waste and specified the characteristics of E-waste. Currently, these Guidelines only distinguish between E-waste and non E-waste. The Guidelines also specify the criteria for the import and export of used electrical and electronic equipment or components that are not categorized as E-waste. Waste categorized as E-waste is not allowed to be imported without approval from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Nonetheless, the guidelines do not supply any specific information on how to manage E-waste<sup>433</sup>. In order to manage them, it must do in accordance with the Environmental Quality (Scheduled wastes) Regulations 2005.

Scheduled wastes can be stored, recovered or treated within the premises of the waste generators. Such activities do not require licensing by the Department of Environment. A waste generator may store scheduled wastes generated by him for 180 days or less after its generation provided that the quantity of scheduled wastes accumulated on site shall not exceed 20 metric tonnes. However, waste generators may apply to the Director General in writing to store more than 20 metric tonnes of scheduled wastes. The containers that are used to store scheduled wastes shall be clearly labeled with the date when the scheduled wastes are first generated as well as the name, address and telephone number of the waste generator.

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<sup>432</sup> E- waste can be categorized as metal and metal-bearing wastes (SW 110) in the first schedule. This type of waste contains components such as mercury, lead, cadmium, nickel, cadmium chromium, lithium, manganese etc.

<sup>433</sup> Junaidah Ahmad Kalana, "Electrical and Electronic Waste Management Practice by households in Shah Alam, Selangor, Malaysia", INTERNATIONAL JOURNAL OF ENVIRONMENTAL SCIENCES 1, 2, p.134. (2010).

On-site incineration of scheduled wastes is not encouraged. If it is deemed necessary, application for the installation of such incinerator must strictly adhere to the Guidelines On the Installation of On-site Incinerator for the Disposal of Scheduled Wastes in Malaysia", including carrying out a detailed environmental impact assessment and display of the EIA report for public comments.

Waste generators may apply for special management of scheduled wastes to have the scheduled wastes generated from their particular facility or process excluded from being treated, disposed of or recovered in premises or facilities other than at the prescribed premises or on-site treatment or recovery facilities, as stipulated under regulation 7(1) of Environmental Quality (Scheduled Wastes) Regulations 2005<sup>434</sup>.

### 3.2 Cross-border hazardous waste management

Besides inland hazardous waste management, this Act is also deals with management in Cross-border detrimental waste in accordance with section 34 B (1) (b) and (c) which provides that no person shall receive or send, or cause or permit to be received or sent any scheduled wastes in or out of Malaysia or transit or cause or permit the transit of scheduled wastes, without any prior written approval of the Director General. Any person who contravenes this section shall be guilty of an offence. The prescribed measures conform to the Basel Convention which Malaysia ratified. That convention reveals essence of Transboundary Hazardous wastes movements. The Convention requires a prior informed consent that must be followed before any export or import is allowed to or from another party. In addition, any carrier must provide documentation of moving, packing, labeling and shipping procedures prescribed by international standards. The Exporting State is obliged to get the written approval of the Importing state for such a movement to be legal under the Convention. It is of note that the Convention places a general prohibition on the exportation or importation of wastes between Parties and non-Parties. The exception to this rule is where the parties will make multi-lateral or regional agreements with them<sup>435</sup>.

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<sup>434</sup> AEC Business Support Center, Office of the International Trade Promotion at Kuala Lumpur, Malaysia, "Environmental management", p. 7, <[http://www.ditp.go.th/contents\\_attach/92458/92458.pdf](http://www.ditp.go.th/contents_attach/92458/92458.pdf)> (accessed December 11, 2015).

<sup>435</sup> Office of Natural Resources and Environmental Policy and Planning, Ministry of Natural Resources and Environment, "Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal", <[http://www.onep.go.th/library/index.php?option=com\\_content&view=article&id=78:2012-04-23-07-14-57&catid=26:2012-04-02-06-57-22&Itemid=34](http://www.onep.go.th/library/index.php?option=com_content&view=article&id=78:2012-04-23-07-14-57&catid=26:2012-04-02-06-57-22&Itemid=34)>, (accessed December 11, 2015).

## b. Solid Waste and Public Cleaning Management Act 2007

In 2007, Malaysian Government passed a new Act on solid waste management named the Solid waste and public cleaning management Act 2007. It purposes to enhance the Federal government authority on solid waste management and public cleansing especially investing and setting solid waste management system in order to cope with different standards among states and limitation of local investment. However, Local authorities still play a main role in solid waste collecting<sup>436</sup>.

The Act establishes the Solid Waste Management and Public Cleansing Corporation to undertake the tasks in a professional and competent manner. The Corporation is established to manage all operational issues at the Federal, State and Local level and also to ensure that the role of enforcing the Act is carried out effectively and efficiently. In fact, the Corporation is assuming the role previously carried by the Local Authorities in providing the necessary support to the Department of National Solid Waste Management in the implementation of the Act<sup>437</sup>.

The methods of solid waste disposal are prescribed by Ministry of Housing and local authorities. For household waste, the main role of the scheme is to determine the duties of the waste generators and to determine the destination for the waste collected in the scheme area. Such duties may not only be restricted to the location and use of the bins provided, but may also include provisions on source sorting of recyclables and special handling of any specific waste fraction. The functions and performance of the service providers are also stipulated. The scheme regulations are supplemented with a requirement for all service providers, whether collectors, storage and trading agents, recyclers, operators of waste transport, transfer, treatment or disposal facilities, to obtain a licence. The licence requirement ensures that only entities considered fit and proper for the purpose may venture into the waste business. The requirements for obtaining licences are, however, generally restricted to the provision of the necessary facilities, equipment and systems. The licence will be followed by a set of conditions, including the types of waste to be handled, the generators and scheme areas from which the licensee may collect or receive waste, the type and quality of treatment, the final disposal site for the waste and the reporting requirements. Any breach of licence conditions may lead to termination of the licence<sup>438</sup>.

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<sup>436</sup> Niramol Suthamkij, "Comparative analysis of Solid Waste management in ASEAN countries" <[http://www.pcd.go.th/info\\_serv/Eco\\_Asean/files/570825.pdf](http://www.pcd.go.th/info_serv/Eco_Asean/files/570825.pdf)>, accessed December 11, 2015), p. 10.

<sup>437</sup> Nadzri Bin Yahaya and Ib Larsen, "Federalising Solid Waste Management In Peninsular Malaysia", Department of National Solid Waste Management, Ministry of Housing and Local Government, 2008, p.6.

<sup>438</sup> *Ibid.*, p.8.

### c. National Forestry Act 1984

The essence of the Act is forest management. The Act was enacted to update and harmonize forest law in the country because prior to the Act, the various State governments formulated the legal guidelines on forest management and conservation<sup>439</sup>. This is to say that when the Act entered into force, the State Forestry Departments must implement the National Forestry Act 1984. The Act requires all the State Forestry Departments in Peninsular Malaysia to classify the Permanent Reserved Forests (PRFs) into one or more of the following functional use categories through a combination of slope and elevation classes<sup>440</sup>:

- (1) timber Production Forest under sustained yield;
- (2) soil protection forest;
- (3) soil reclamation forest;
- (4) flood control forest;
- (5) water catchment forest;
- (6) forest sanctuary for wildlife;
- (7) virgin jungle reserved forest;
- (8) amenity forest;
- (9) education forest;
- (10) research forest; and
- (11) forest for federal purposes.

The National Forestry Act 1984 copes with the essence of forest management which stipulate that taking of forest produce from permanent reserved forest must be licensed from the government authorities, because section 14 of the Act provides that all forest produce situate, lying, growing or having its origin within a permanent reserved forest shall be the property of the State Authority except where the rights to such forest produce have been specifically disposed of in accordance with the provisions of this Act or any other written law. In addition, section 15 shows that no person shall take any forest produce from a permanent reserved forest or a State land except under the authority of a licence or use permit granted from State director of Forestry or in accordance with any other written law. The applicant must to prepare to prepare a forest management plan or forest harvesting

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<sup>439</sup> Rusli Mohd, Amat Ramsa Yaman , Overview of Forest Law Enforcement in Peninsular Malaysia , World Wide Fund for Nature (WWF) Malaysia , 2001 ,p.6.

<sup>440</sup> Chen Hin Keong, James Hewitt, Thang Hooi Chiew, MALAYSIA: Scoping Baseline Information for Forest Law Enforcement, Governance and Trade Baseline study 8, EU Forest Law Enforcement Governance and Trade Facility, 2012, pp. 17-18.

plan; a reforestation plan in the manner to be specified by the Director and to register with the Director a property mark which is approved by the Director.

Besides such license, the Act also allows people who are not the holder of a use permit to carry out any activity upon any land within a permanent reserved forest.

Section 34 of this Act provides that use permits may be issued or renewed on behalf of the State Authority by the Director for the carrying out of any of the following activities:

- (a) research;
- (b) education or training;
- (c) recreation;
- (d) use of water resources except the construction or operation of hydro-electric dams;
- (e) cultivation of vegetables and fodder crops;
- (f) establishment of conversion plants;
- (g) establishment of logging infrastructures.

Furthermore, the government authorities may reserve any State land within the State for the purpose of a National Park under the National Parks Act 1980. The objective of the establishment of National Parks is the preservation and protection of wild life, plant life and objects of geological, archaeological, historical and ethnological and other scientific and scenic interest and through their conservation and utilization to promote the education, health, aesthetic values and recreation of the people. This Act provides that no person use or occupation of any land within a National Park unless being leased or permitted by the State Authority subject to such conditions and restrictions as it thinks fit to impose and for any of the following purposes only the construction and maintenance of roads; the construction and maintenance of airstrips; the construction and maintenance of dams and reservoirs and the construction and maintenance of hotels, rest houses, dwelling houses, buildings and works of public utility.

Last but not least, there also is the Wildlife conservation Act 2010 stipulates the State Authority may declare any State land to be a wildlife reserve or a wildlife Sanctuary in order to protect the wildlife.

#### d. Wildlife Conservation Act 2010

This Act is deals substantially with the illegal protected wildlife hunting control and any offences relating to the hunting. It provides wildlife conservation and protection measure as follows<sup>441</sup>;

##### 1. Declaration of wildlife reserves and wildlife sanctuaries

Section 47 of the Act provides that the State Authority may, after consultation with the Minister of Natural Resources and Environment, from time to time by notification in the Gazette, declare any State land to be wildlife reserve or a wildlife sanctuary. Due to that notification, no person shall enter such wildlife reserve or wildlife sanctuary unless he first obtains a written permit from the Director General for Wildlife and National Park authorizing him to do so.

Moreover, this Act also provides no person shall in a wildlife reserve, disturb, cut, remove or take any soil, timber or vegetation ; in a wildlife sanctuary , hunt any animal or bird ; take, disturb, damage or destroy the nest or egg of any animal or bird ; or disturb, cut, remove or take any soil, timber or vegetation.

##### 2. Prescribing the times and open season for wildlife hunting

Wildlife Conservation Act 2010 does not prohibit hunting wildlife at all, but it empowers The Director General for Wildlife and National Park , with the approval of the Minister of Natural Resources and Environment, by order published in the Gazette , prescribe conditions with respect to the granting of licences and without prejudice to the generality of the foregoing may in particular prescribe the open season and close season in respect of protected wildlife or the times during which, and the places where, any wildlife may be hunted and the quota of licences and permits to be granted for each year or open season.

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<sup>441</sup> Surasak Boonrueng, “Final report: Roles of state and its citizen on preservation and protection of wildlife in natural habitat” (in Thai), presented to the Administrative Committee of research and consultant center of Faculty of Law ,Thammasat University , 2014, p. 57-58.



### 3. Providing the offences relating to wildlife conservation

This Act prescribes the offences relating to wildlife conservation in many sections such as hunting mature protected wildlife in the First Schedule<sup>442</sup> without licence, hunting totally protected wildlife in the Second Schedule without special permit which person who commit it may receive more punishment than delinquents hunting wildlife in the First Schedule, hunting immature protected wildlife without licence, carrying out business of dealing without licence, importing and exporting protected wildlife without licence, and so on.

#### e. Fisheries Act 1985

This Act deals substantially with the fishery resources. It states its objective to govern all marine and estuarine fisheries' activities including the conservation, management and development of maritime and estuarine fishing and fisheries in Malaysian Fisheries Waters<sup>443</sup>, and to turtles and riverine fishing in States in Malaysia and to matters connected there with and incidental thereto. Marine-capture fishery activities are regulated through a vessel licensing system and are under the responsibility of Department of Fisheries. Licenses issued include licenses for vessels and equipment.

Section 2 of the Act defines the term "*fishery*"<sup>444</sup> to mean any one or more stocks of fish that can be treated as a unit for the purposes of their conservation, management, and development, and includes fishing for any such stocks and aquaculture. Therefore, "*fishery*" also includes the conservation, management, and development of aquaculture. The Minister of Agriculture and Agro-based Industry is free to legislate on matters related to rules and procedures on licensing of marine culture system; prescribing fish feed standards; promoting

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<sup>442</sup> The Wildlife Conservation Act 2010 divides the wildlife into three categories in the schedules;  
First Schedule: Protected wildlife such as Sambar deer, Silvered Leaf monkey, Bighorn sheep are particularly protected for mature wildlife.

Second Schedule: Totally protected wildlife such as wild yak, wild asiatic buffalo, Roloway monkey.

Third Schedule: Immature wildlife such as Sumatran Rhinoceros which has the length of head and body is less than 240 cm, length of tail is less than 65 cm and incisors in the upper jaw are absent.

<sup>443</sup> Jasim Saad, Review of Malaysian Laws and Policies in relation to the implementation of Ecosystem Approach to Fisheries Management in Malaysia, (Honolulu, Hawaii: The USAID Coral Triangle Support Partnership, 2012), p.7.

<sup>444</sup> "Fish" under this Act has a broad meaning, including water plant and aquatic animals.

and regulating aquaculture in maritime waters; and prescribing measures for the control of fish diseases.

In addition, the Act lists several activities as “offenses”. Some of these include foreign fishing vessel/foreign national contravening the act by; using, attempting to use, carrying, or possessing explosives, poisons, or pollutants; any apparatus utilising an electric current; or any prohibited gear for the purpose of killing, stunning, disabling, or catching fish or rendering such fish more easily caught; disturbing, harassing, catching, or taking any aquatic mammal or turtle found beyond the jurisdiction of any state in Malaysia and so on<sup>445</sup>.

#### f. Waters Act 1920 (Revised 1989)

This Act is a federal law that provides for the control of rivers and streams. There are several sections under this Act that deal with the conservation of rivers through the prohibition of the commission of certain act that may affect rivers. For example, it is an offence to fell a tree that may fall into water; to obstruct or interfere with any river; to build a bridge over a river ; to diverse water from rivers or to pollute a river etc<sup>446</sup>.

#### g. Land Conservation Act 1960

This Act relates to the conservation of hill land and the protection of soil from erosion and the inroad of silt. Soil erosion and the inroad of silt subsequently may cause problems to consumer on inland water resources. Therefore, soil erosion and the inroad of silt should be taking care of in order to protect the consumer<sup>447</sup>. The Act prescribes many measures to cope with those problems as follows;

##### 1. Declaration of hill land for the purpose of land conservation

Section 3 provides that the Ruler in Council or the Yang di-Pertua Negeri in Council of a State may, by notification in the *Gazette*, declare any area or class or description of land in the State to be hill land for the purposes of this Act. Section 8 also prescribes that Whenever it appears desirable to the Ruler in Council or the Yang di-Pertua Negeri in Council, as the case may be, to acquire any hill land for the purpose of preventing soil

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<sup>445</sup> *Ibid.*,p.8.

<sup>446</sup> Sharifah Zubaidah , Maizatun Mustafa , Legal and instrument framework for pollution prevention in Malaysian rivers , Malayan Law journal (4: 2008) , p.37.

<sup>447</sup> Muhammad Rizal Razman , Sakina Shalik Ahmad Yusoff , Shamsuddin Suhor , et al., “ Regulatory Framework for Land-Use and Consumer Protection on Inland Water Resources Towards Sustainable Development” , International Business Management (4 : 2011) , p.211.

erosion it shall be lawful for the Ruler in Council or the Yang di-Pertua Negeri in Council to direct that such hill land be acquired either by private treaty or under the Land Acquisition Act 1960.

## 2. Prohibition of short-term crops

Section 5 of the Act stipulates that no person shall plant any hill land with short-term crops<sup>448</sup>. Provided that the Land Administrator may issue an annual permit to plant specified short-term crops to any applicant who satisfies him that such cultivation will not cause appreciable soil erosion.

## 3. Restrictions on clearing of hill land

Section 6 provides that no person shall clear any hill land or interfere with, destroy or remove any trees, plants, undergrowth, weeds, grass or vegetation on or from any hill land. However, the act provides that it shall be lawful for the Land Administrator, on the application of the owner or occupier of any hill land, to authorize by permit in writing under his hand, subject to such terms and conditions and to such extent and in such manner as may be specified the clearing of such hill land for the purpose of cultivation or the clearing or weeding of such hill land under lawful cultivation in such permit. However, the Land Administrator can act under the power conferred by section 14 which prohibits the removal of trees, plants, undergrowth, weeds or grass or making drains, watercourses, dams and retaining walls specific in strength to the mudflow issue or adopt any course of action to control that problem<sup>449</sup>.

Any person who fails to comply with any order made under section 14 shall be liable for an offence under section 18.

## h. Renewable Energy Act 2011

Malaysia has abundant domestic energy resources including oil, gas, hydropower and coal. However, domestic fossil fuel resources are depleting, which has reinforced the need to source renewable energy alternatives<sup>450</sup>. In order to promote renewable energy, the Malaysian Parliament passed The Renewable Energy Act 2011. It establishes a system of feed-in tariffs for renewables. The system sets fixed tariff rates for electricity generated from solar, biomass, biogas, and hydro energy. Depending on the type of resource used, these

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<sup>448</sup> “short-term crops” means any crops which normally complete their life cycle within two years after planting, and includes pineapples, bananas and derris.

<sup>449</sup> *Ibid.*, p.212.

<sup>450</sup> DLA Piper, Renewable Energy in the Asia Pacific: A Legal Overview, 2014, p. 48.

tariffs are guaranteed for a period of 16 to 21 years<sup>451</sup>. This Act directly copes with Climate change adaptation by way of achieving reduction in carbon emissions and generating electricity from other sources of renewable energy instead.

There are some details about the system of feed-in tariffs be prescribed in this Act as follows

#### 1. The characteristic of a system of feed-in tariffs for renewable energy in Malaysia

The Feed-in Tariff (FiT) is one of mechanism which catalyses generation of renewable energy. This mechanism allows electricity produced from indigenous renewable energy resources such as biomass, biogas, small hydro and solar voltaics<sup>452</sup> to be sold to power utilities at a fixed premium price for a specific duration. It typically offers long term agreements to renewable energy producers based on their particular pricing and generation costs for each technology. FiT's offer of long term agreement and guaranteed pricing promotes diversity in renewable energy technologies, while securing producers' return of investments at the same time<sup>453</sup>.

#### 2. Feed-in Tariff Mechanism<sup>454</sup>

##### 2.1 Eligibility for participation in feed-in tariff system

Section 4 provides that proposes to generate renewable energy from a renewable energy installation not more than 30 Megawatts or such higher installed capacity as may be approved by the Minister of Energy, Green Technology and Water and meets such other criteria as may be prescribed by the Sustainable Energy Development Authority (SEDA).

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<sup>451</sup> Michal Nachmany, Sam Frankhauser, et al, The GLOBE Climate Legislation Study : A Review of Climate Change Legislation in 66 Countries, Fourth edition (the Grantham Research Institute on Climate Change and the Environment at the London School of Economics , 2013) p. 341

<sup>452</sup> The Four types of these energy resources are the renewable energy sources which the government agree to purchase the electricity generated by private sector as provided in Renewable Energy (Criteria for Renewable Resources) Regulations 2011.

<sup>453</sup> Ahmad Danial Abdul Rahim, Feed-in Tariff in Malaysia: a Legal Framework for Renewable Energy Bookmark it! Mail it! Print it! , <<http://www.terralext.org/publication/p78841707f4/feed-in-tariff-in-malaysia-a-legal-framework-for-renewable-energy>> , (accessed December 10 , 2015).

<sup>454</sup> Sustainable Energy Development Authority , Renewable Energy Development and Feed-in Tariff (FiT) Implementation in Malaysia, <[http://eeas.europa.eu/delegations/malaysia/documents/press\\_corner/all\\_news/2012/160512\\_fp7seda\\_en.pdf](http://eeas.europa.eu/delegations/malaysia/documents/press_corner/all_news/2012/160512_fp7seda_en.pdf)> , 2012 , (accessed December 10 , 2015) p. 15-16

## 2.2 Priority of purchase and distribution

Section 14 provides that when a renewable energy installation has been connected to a supply line connection point, a distribution licensee shall as priority over the electricity generated from resources other than renewable resources, purchase and distribute through the supply line the entire available quantity of renewable energy generated by a renewable energy installation owned by a feed-in approval holder unless exempted by SEDA with having regards to public and private safety. Contravention committed by any person is an offence and he/she is liable to a fine not exceeding one million ringgit.

## 2.3 Payment of feed-in tariff

Section 16 provides that feed-in approval holder shall be paid the feed-in tariff by distribution licensee via a renewable energy power purchase agreement. The FiT rates be prescribed in Schedule of this Act. Section 17 also provides that The FiT rate shall be reduced progressively each year based on the applicable degression rate in Schedule.

Nevertheless, The FiT in Malaysia is not financed from tax revenue. Instead, the FiT will be financed by a Renewable Energy Fund which be administered and controlled by SEDA. The Sources of Fund prescribed in section 23 shall consist of such sums as may be provided by the Parliament for the purposes of the Fund from time to time; such sums paid to the Authority as a fine due to the feed-in approval holder who in any manner dishonestly generates electricity from a renewable energy installation by using resources other than the renewable resources under subsections 22(4), an amount of payment paid by the distribution licensee to the Renewable Energy Fund under subsections 24(1) and civil debt paid by the distribution licensee to the Authority under subsections 24(5) ; all money derived as income from investments made from the Fund , including interest , and all other money fully received by the Authority on behalf of the fund.

### i. Sustainable Energy Development Authority Act 2011

This Act deal substantially with the Sustainable Energy Development Authority (SEDA) which is charged with overseeing the implementation and operation of the renewable energy feed-in tariff system established under the Renewable Energy Act 2011<sup>455</sup>.

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<sup>455</sup> Michal Nachmany, Sam Frankhauser, et al, The GLOBE Climate Legislation Study: A Review of Climate Change Legislation in 66 Countries, Fourth edition (the Grantham Research Institute on Climate Change and the Environment at the London School of Economics , 2013) p. 342.

### 3.6.3 Governmental Authority

#### (1) Department of Environment (DOE)

In Malaysia, the Department of Environment has also played a leading role in regulation of Environmental conservation under the Ministry of Natural resources and Environment.

##### a. Administrative structure

The chief administrator of the DOE is the Head director, and assisted by two deputy head directors. The deputy head director (Development) regulates the Environmental Assessment Division, Environmental Awareness and Education Planning Division, Information Technology Division and Environmental Institute. And the deputy head director (Operation) regulates the Air pollution control Division, the Water and Marine pollution control Division, the Hazardous Substances control Division and the Enforcement Division. And there are also Administrative and Finance Division, Integrity Unit and Legal Unit directly belonging to the head director. In addition, there are State DOE offices. The chief administrators of the State offices are the directors and those offices are subordinate to the Head director of DOE<sup>456</sup>.

##### b. Competent authority

The main function of the DOE is to prevent, eliminate, control pollution and improve the environment, consistent with the purposes of the Environmental Quality Act 1974 and the regulations there under DOE is also responsible for the implementation of the resolutions decided by the conventions of the international environment such as Vienna Convention for the protection of the Ozone Layer 1985, Montreal Protocol on Substances That Deplete the Ozone Layer 1987, the Basel Convention on the Transboundary Movement of Hazardous Waste and their Disposal Act 1989<sup>457</sup>.

#### (2) Department of National Solid Waste Management

##### a. Administrative structure

Department of National Solid Waste Management is under the Ministry of Housing and Local Government. The chief administrator of the Department of National Solid Waste Management is the Director General and there is also an assistant administrative secretary. The structure of the Department can be divided into four division namely; Policy and

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<sup>456</sup> Department of Environment, <<http://www.doe.gov.my/portalv1/en/tentang-jas/struktur-organisasi/carta-organisasi>>, (accessed December 10, 2015).

<sup>457</sup> Department of Environment, <<http://www.doe.gov.my/portalv1/en/tentang-jas/pengenalan/perkhidmatan-teras>> (accessed December 10, 2015).

Planning Division , Technical Service Division , Approval and Licensing Division and Service Management Division<sup>458</sup>.

b. Competent authority

The functions of Department of National Solid Waste Management are to propose policies, plans and strategies in respect of solid waste and public cleansing management ; to formulate plans for solid waste management including location, type and size of new treatment facilities, coverage areas of solid waste management facilities, the solid waste management schemes to supply controlled solid waste to the solid waste management facilities and the time-scale for the implementation of the plans ; to set standards, specifications and codes of practice relating to any aspect of solid waste management services and public cleansing management services ; to exercise regulatory function specified in Solid waste and public cleaning management Act 2007 and any regulation made under the Act ; to grant licences and approval under the Act and to carry out such other activities for the purpose of carrying the implementation of the Act<sup>459</sup>.

(3) Department of Fisheries

a. Administrative structure

Department of Fisheries is under the Ministry of Agriculture and Agro-based Industry. The chief administrator of the Department of Fisheries is the Director General and assisted by two deputy director general. The deputy director general (Management) regulates Management Service Division, Information Management Division, Resource Protection Division, Extension and Transfer of Technology Division and Academy of Fisheries Malaysia. And The deputy director general (Development) regulates Planning and Development Division, Resource Management Division Aquaculture Development Division , Engineering Division, Marine Fishery Resources Development and Management Department. In addition, there are some divisions belonging to the director general, including Legal Office, Research Division, Fisheries Biosecurity Division, Integrity Unit and State Fisheries offices<sup>460</sup>.

b. Competent authority

The functions of Department of Fisheries are to develop a dynamic market-based fisheries industry through creative and innovative approaches; to manage the national

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<sup>458</sup> National Solid Waste Management Department , <<http://jpspn.kpkt.gov.my/index.php/pages/view/41>> (accessed December 10 , 2015).

<sup>459</sup> National Solid Waste Management Department, <<http://jpspn.kpkt.gov.my/index.php/pages/view/37>> (accessed December 10 , 2015).

<sup>460</sup> Department of Fisheries Malaysia, <<http://www.dof.gov.my/en/organization-chart1>> (accessed December 10 , 2015).





8) Act as focal point on matters relating to sustainable energy & climate change matters relating to energy.

### **3.7 Law on Promotion and Preservation of Culture and Way of Life**

#### **3.7.1 Introduction**

It may be said that Malaysia is the country which has variety of cultures. Because of its diversity of ethnicity citizen settle in each region. Each ethnicity has its own different culture and way of life. However if we consider in the aspect of law enforcement, we may say that law is the mechanism for combination of people with the different cultures, traditions and different ways of life to live under the same rule. In consideration of the Malaysian law, regulations, provisions rules and procedures on the promotion and preservation of culture and way of life, we realize that Malaysia does not have much substance. The laws that take an important role for promotion and preservation of the culture and way of life is The National Heritage Act 2005, The Malaysia Tourism Promotion Board Act 1992, The National Art Gallery Act 1959, The National Archives Act 1996, and The National Library Act 1972. Under this research, the researcher would like to focus on some Acts.

#### **3.7.2 Relevant Legislations**

In this part, two of the Malaysian laws concerning the promotion and preservation of culture and way of life, namely the National Heritage Act 2005 and the Fees (Department of Museum Malaysia) (Validation) Act 2014, which is the law with purpose of expanding the application of The Fees Act 1951 in specific aspect of the collection of fee for visiting museum or any exhibition organized by the Department of Museum, The reason for this act. Because of it is a statute that provides guidelines for the supervision and management of museums in Malaysia. That will be essentially presented as followings.

##### **(1) The National Heritage Act 2005**

###### **a. Background**

Before the National Heritage Act 2005 come into force, there was an enforcement of the Antiquities Act 1976, and the Treasure Trove Act 1957. The National Heritage Act 2005. It was announced in the government gazette on 31 December 2005. The structure of this act is to set the policy, to set the power to reserve and preserve national heritage management,

to provide National Heritage Commissioner, to regulate any operations in accordance with this Act. In addition, to appoint the National Heritage Council under this Act, provide Heritage Fund, and to make the procedure of registration antiquities and archaeological site as National Heritage including hearing the effect of the registration as well.

b. Scope of Enforcement

The objective of this Act is to reserve and preserve National Heritage such as culture, building and Natural Heritage. The enforcement of this act covers the administrative district of Kuala Lumpur, Labuan and Putrajaya administrative district. The purpose shall not consider the underwater cultural heritage, pipeline and cable placed on the seabed and installation other pipeline and cable, placed on the seabed as the underwater culture heritage zone.

c. Policy on conservation and preservation of national heritage

The Minister of Tourism and Culture shall provide or issue any policies, statements or directives relating to the business strategy or conduction on the conservation and preservation of national heritage. However he has the discretion to decide not to set such policy if it relates to state jurisdiction except the relevant State Authority has been consulted.<sup>463</sup>

d. The National Heritage Commissioner

d.1 Appointment of Commissioner of Heritage

In the process of appointment of Commissioner of Heritage, it shall be appointed by the Minister of Tourism and Culture, an officer to be known as the “Commissioner of Heritage” for the purpose of carrying out the powers and functions assigned to the Commissioner under this Act. Its appointment shall publish in the gazette. Each term is not over 3 years.<sup>464</sup>

d.2 Functions of the Commissioner

The functions of the Commissioner are as follows:<sup>465</sup>

(1) To determine the designation of sites, registration of objects and underwater cultural heritage.

(2) To establish and maintain the register and to determine and specify the categories of heritage to be listed in the register.

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<sup>463</sup> The National Heritage Act 2005, Article 3.

<sup>464</sup> The National Heritage Act 2005, Article 4.

<sup>465</sup> The National Heritage Act 2005, Article 6.

(3) To supervise and oversee the conservation, preservation, restoration, maintenance, promotion, exhibition and accessibility of heritage.

(4) To promote and facilitate any research relating to heritage.

(5) To maintain documents relating to any excavation, exploration, finding or search for heritage.

(6) To establish and maintain liaison and co-operation with the State Authority in respect of conservation and preservation of heritage matters.

(7) To advise and co-ordinate with the local planning authority, the Council and other bodies and entities at all levels for the purpose of safeguarding, promoting and dealing with any heritage.

(8) To promote and regulate that best standard and practice applied in the conservation and preservation of heritage.

(9) To advise the Minister of Tourism and Culture with regard to any matter in respect of conservation and preservation of heritage.

(10) To perform such other functions under this Act as the Minister may assign from time to time and to do all such things as may be incidental to or consequential upon the discharge of his powers and functions.

#### e. National Heritage Council

##### e.1 Functions of National Heritage Council

The functions of the Council shall to advice the Minister of Tourism and Culture and the Commissioner on all matter relating to heritage, and the due administration and enforcement of law relating to heritage and to advice the Minister and the Commissioner on any matter referred to it. The Minister and the Commissioner shall not be bound to act upon the advice of the Council.<sup>466</sup>

##### e.2 Membership of National Heritage Council

The Council shall consist of the following members a Chairman, appointed by the Minister of Tourism and Culture, the Secretary General of the Ministry of Tourism and Culture or his representative, the Director General of Town and Country Planning or his

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<sup>466</sup> The National Heritage Act 2005, Article 9.

representative, the Director General of the Museum Department or his representative<sup>467</sup>, the Commissioner and not more than six other members, at least one of whom shall be a public officer who possess experience or expertise in relation to the management, conservation or preservation of sites and objects of natural or cultural heritage significance, appointed by the Minister and shall hold office for a period of not more than 3 years.<sup>468</sup>

f. Heritage Fund

Establishment of the Heritage Fund established in accordance with this Act. The Fund shall be controlled, maintained and operated by the Commissioner. The Fund shall consist of matters as follows:<sup>469</sup>

(1) Such sum as may be appropriated by Parliament from the Consolidated Fund and otherwise for the purpose of this Act;

(2) All money received by way of donation, gift or grant;

(3) All money derived from levy imposed under this Act;

(4) Interest received from investment by way of fixed deposit of money standing to the credit of the Fund.

The expenditure of fund shall expense in accordance with the objective under this Act. For example, the expenditure for purchase and conservation of national heritage, research, study or publication of material for the protection of heritage and conservation area.<sup>470</sup>

g. National Heritage Registration

The National Heritage Commissioner shall establish and maintain a register known as “the National Heritage Register”<sup>471</sup> as may be prescribed containing the lists of heritage items registered under this Act and shall make the Register available for public inspection, make a copy, or take extracts. The Registration payment fee is prescribed by the Minister of Tourism and Culture.

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<sup>467</sup> The Ministry's name under the provisions of Section 10 remains the original Ministry title before the restructuring of the administration. However, there are brackets in the name of the Ministry that have been re-adjusted in accordance with the actual structure of the administration, with the period of translation of this provision.

<sup>468</sup> The National Heritage Act 2005, Article 10.

<sup>469</sup> The National Heritage Act 2005, Article 20.

<sup>470</sup> The National Heritage Act 2005, Article 21.

<sup>471</sup> The National Heritage Act 2005, Article 23.

## h. Heritage site

### h.1 Designation of heritage site

The National Heritage Commissioner may designate any site which has natural heritage or cultural heritage significance to be a heritage.<sup>472</sup> The determination shall publish in the Gazette and the local journal.

### h.2 Hearing

The person who is affected by the determination shall appeal to the Commissioner within 30 days after it published in the Gazette.

In the case where a notice of objection to the designation of the site is served, the Commissioner shall set a date, time and place for the hearing of the objection and it shall, at least twenty one days before the date of the hearing serve a notice of hearing in the form and manner as prescribed by the Commissioner, upon the objecting party and the owner of the site.<sup>473</sup>

The Commissioner of Heritage , after hearing the parties, if it is satisfied that the site is of cultural heritage significance and the State Authority has given its consent , he shall designate the site as a heritage site and publish such decision in the Gazette and a local journal. The notification that site has been designated as a heritage site.

### h.3 Conservation and preservation of heritage site

The Commissioner shall responsible for preservation and reservation of national heritage site. In the case where a heritage site is situated on an alienated land, the Commissioner may after consultation with the State Authority make arrangements with the owner or occupier for purchase or lease the heritage site or make any decision to acquire the heritage site in accordance with the provisions under this Act or remove the whole or any part of a building or monument on the heritage site. In case of any dispute as to the amount of compensation the one who affected may appeal to the minister. His decision shall be final.<sup>474</sup>

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<sup>472</sup> The National Heritage Act 2005, Article 24.

<sup>473</sup> The National Heritage Act 2005, Article 29.

<sup>474</sup> The National Heritage Act 2005, Article 38.

## i. Heritage Object

### i.1 Discovery of Object

Any person who discover any object which he has reason to believe that it has the cultural heritage significance shall immediately notify the Commissioner, any authorized officer or the District Officer of the district where the object was discovered, and where practicable. That person shall deliver the object to the Commissioner, authorized officer or the District Officer who shall give a written acknowledgement on receiving such object and keep the said object safely.<sup>475</sup> After notify such discovery to the Commissioner with the written notice, it shall has process to examine such cultural heritage significance.

For the one who contravenes, he may has conviction to be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both

### i.2 Declaration as heritage object

The Commissioner is responsible for declaration any object which has cultural heritage significance to be a heritage object in the Gazette and shall cause it to be listed in the Register.<sup>476</sup> However it declaration and the register list may be repeal, amend or revoke in case of necessary background and for the reason upon this Act. When an object is retained by the Commissioner or in his opinion, that object should be safeguarded at the place where it was found. The Commissioner shall at his discretion pay a reasonable amount of compensation to the finder; the owner of an alienated land in or on which the object was discovered; or the informant.<sup>477</sup> On the discovery of any object having cultural heritage significance, the Commissioner shall be entitled to the custody and possession of the same on behalf of the Federal Government and shall responsible for its safeguarding and safekeeping.

### i.3 Dispute as to compensation or apportionment

Where there is any dispute regarding the compensation to be paid for any heritage object or apportionment of share of such object, such dispute shall be referred to the Minister whose decision shall be final.<sup>478</sup>

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<sup>475</sup> The National Heritage Act 2005, Article 47.

<sup>476</sup> The National Heritage Act 2005, Article 49.

<sup>477</sup> The National Heritage Act 2005, Article 53.

<sup>478</sup> The National Heritage Act 2005, Article 55.

#### i.4 Conservation of heritage object

This Act shall determinate the method for preservation and reservation of heritage object that the owner or custodian of a heritage object has the duty to keep the heritage property in good condition and in a secure place. In case of any loss or damage to such heritage object or any part of it upon discovery; the owner or custodian shall immediately report to the Commissioner. Any person who fails to comply above may commit an offence.<sup>479</sup>

#### j. Declaration of National Heritage

The Minister may declare any heritage site, heritage object, underwater cultural heritage listed in the Register or any living person as a National Heritage. In making a declaration above the Minister may consider the list as follows;<sup>480</sup>

- (1) The historical importance association with Malaysian history.
- (2) The design or aesthetic characteristic and the scientific or technical innovation or achievement.
- (3) The social or cultural association.
- (4) The potential to educate, illustrate or provide further scientific investigation in relation to Malaysian cultural heritage;
- (5) The importance in exhibition a richness, diversity or unusual integration of feature.
- (6) The rarity or uniqueness of the natural heritage, tangible or intangible cultural heritage or underwater cultural heritage.
- (7) The representative nature of a site or object as part of a class or type of a site or object.
- (8) Any other matter which is relevant to the determination of cultural heritage significance

In the case where the site, object or underwater cultural heritage is situated on State land, the Minister shall consult the State Authority before making any declaration. Where

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<sup>479</sup> The National Heritage Act 2005, Article 59.

<sup>480</sup> The National Heritage Act 2005, Article 67.

the site, object or underwater cultural heritage is on an alienated land or belongs to any person other than the Federal Government or a State Government, the owner, custodian or trustee of that site, immovable object or underwater cultural heritage shall notify at least thirty days prior to the date of the proposed declaration.

In the case where the declaration involves an intangible cultural heritage and copyright still subsists in such works, music, poetry, tradition, poetry or something else including copyright that is still protected.<sup>481</sup> The consent of the copyright owner shall be obtained before any declaration is made. Where the declaration involves a living person, the consent of that person shall be obtained before any declaration is made.

In the case, any person who object may submit an objection in writing to the Minister within three months of its publication and may apply to the Minister for the revocation of the order. The Minister may, after having been advised by the Council, revoke or refuse to revoke the order. Such decision shall be final.

#### k. Licensing

Licensing operation is made for object with historical background. The person who intends to export the heritage or discovering heritage require to have license.

##### k.1 License to export

In the case of license to export, the person who export heritage item shall have a license obtain from the Commissioner upon the reasonable ground of national importance or interest. If there is no prove to satisfaction that he is the owner of such heritage item or that he is acting on behalf of and with the authority of the owner, the commissioner may prohibit the export such item. In this case this Act has a purpose to prevent the illegal to export of heritage items.

Where an enforcement officer or a proper officer of customs has any reason to believe that an object or material which is to be exported is a heritage item and without having a valid export license, he shall detain such object or material and immediately notify the Commissioner within twenty-four hours for determination. If the Commissioner agrees with the enforcement officer, he may have an order not to export for such item. Any person who contravenes commits an offence and shall on conviction be liable to imprisonment for

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<sup>481</sup> The National Heritage Act 2005, Article 2.



a term not exceeding ten years or to a fine not exceeding one hundred thousand ringgit or both.<sup>482</sup>

#### k.2 Importation of foreign heritage item

In the case of importation of foreign heritage item, a person who intends to import any foreign heritage item do not require a license but shall notify the Commissioner with the document certifying that such foreign heritage was lawfully transported out of a foreign country. If there is a valid reason to believe that a foreign heritage is unlawfully transported, the Commissioner may take possession of it and keep it in custody. Before he executes such act he shall consult the Minister, The decision of Minister shall be final. The Commissioner shall keep and manage it as he thinks fit.

In the case where foreign heritage is proven to have been lawfully transported, the Commissioner shall return it to the person importing without any delay. By the way; if the export country has proved that such foreign heritage was unlawfully and requested to be returned in accordance with the terms of a treaty, or when the Commissioner performs the duty of returning it in accordance with a treaty, he shall, with the help of the competent authorities, take necessary measures to return it to the export country.<sup>483</sup>

#### k.3 License to excavation

In the case of license to excavation, no person shall excavate any land for the purpose of discovering an object unless he holds a license approved by the Commissioner. Any person who contravenes, commits an offence and shall 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.<sup>484</sup>

#### l. Appeal

In the case of appeal any person may, within thirty days from the date of the notification the decision of Commissioner, appeal in writing to the Minister if that person is aggrieved by the decision to designate or not designate a site as a heritage, the issuance of an interim protection order, the decision of the Commissioner to approve or refuse the application to register an object, the refusal of the Commissioner to approve any license or

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<sup>482</sup> The National Heritage Act 2005, Article 83.

<sup>483</sup> The National Heritage Act 2005, Article 84.

<sup>484</sup> The National Heritage Act 2005, Article 86.

any registration. The Minister may confirm, reverse or vary the decision appealed against and in confirming, reversing or varying the decision, may impose such terms or conditions as he deems just or necessary. Before making any decision, he may refer the matter to the Council. His decision shall be final.<sup>485</sup>

## (2) The Fees (Department of Museum Malaysia) (Validation) Act 2014

Regarding the relevant legislations, it may say that Malaysia has no specific law about management of museum. The reason of such circumstance is that the main responsibility belongs to the Department of Museum. However, regarding the fee collection, there is a specific law empowering the Department of National museum namely the Fees Act 2014.

The Fees Act 1951 is the first substantive law to consider while we think of public service. This act declare the court fee, the fee in government office for public service, the stamp service fee and also some other fees including visitation and exhibition entrance fee in the National Museum. Thus when we talk about fees we should consider this 2 Acts altogether.

The Fees Act 2014 is bound for fulfilled and supported, The Fees Act 1951 especially in the part of the visitation and exhibition entrance fee in the National Museum. Under The Fees Act 1951, The department of Museum shall collecting the fee of entrance or visitation only from 1 January 1991 to 11 June 2012. However under the enforcement of the fee Act 2014, there is no termination until it is repeal by other Act. The officer is also protected by law and there is no guilt and responsibility for officer under this Act.<sup>486</sup>

### 3.7.3 Governmental Authority

#### (1) Ministry Of Tourism and Culture

Before the establishment of the Ministry of Tourism and Culture in 1959, there was the Department of Tourism under the Ministry of Commerce. In 1987 the government has steadily policy to support tourism, so it has a policy to set up the Ministry of Culture and Tourism. Later in 1992, the Ministry of Culture and Tourism was established. (the name has changed later as “Ministry of Culture, Arts and Tourism”) which separated in two Ministries in 2004 as Ministry of Tourism and Ministry of Culture. Each has their own duty and

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<sup>485</sup> The National Heritage Act 2005, Article 96.

<sup>486</sup> [http://www.federalgazette.agc.gov.my/outputaktap/20140110\\_AKTA%20760-BI.pdf](http://www.federalgazette.agc.gov.my/outputaktap/20140110_AKTA%20760-BI.pdf), 20 December 2015.

responsibility which separated into two Ministries in 2004. Later in 2013, this was the same period that the Ministry of Culture was dissolved with the Ministry of Tourism. Ministry of Tourism was changed to “Ministry Of Tourism and Culture”. From 2013, the operation under that Ministry is to bind the relation between the promotion of tourism and culture altogether. Under the target of Malaysian should be the leader in destination for tourists.

Ministry Of Tourism and Culture is responsible for oversee and set the policy for promotion of culture and way of life of the citizen. Including oversee the state organization which under the Ministry to perform in accordance with law and his responsibility.

#### a. Administrative Structure

The structure of administration of the Ministry of Tourism and Culture of Malaysia is as follows;

1. Minister of Tourism and Culture
2. Deputy Minister of Tourism and Culture
3. Secretary General
4. Deputy Secretary General (Culture)
5. Deputy Secretary General (Tourism)
6. Deputy Secretary General (Management)
7. Heads of Divisions & Units
8. Directors of State Office

The structure of the Ministry of Tourism and Culture of Malaysia separated in Departments and Agencies and Section as follows;

1. Department of Museums Malaysia (JMM)
2. Department of National Heritage
3. National Department for Culture & Arts (JKKN)
4. Malaysian Handicraft Development Corporation
5. National Archives of Malaysia
6. National Library of Malaysia (PNM)
7. Tourism Malaysia
8. National Academy of Arts, Culture & Heritage (ASWARA)
9. Islamic Tourism Centre (ITC)
10. Malaysia Convention & Exhibition Bureau

#### b. Competent Authority

Ministry of Tourism and Culture has the main policy to support the potentiality to sustainable competition for the organization under the Ministry; for the purpose of economics development aspect. The Ministry has the main mission to develop the unique culture and tourism of the country, express by its art and national heritage. Furthermore it has responsibility to strengthen for all the sector relate to tourism and culture and also develop the skill, knowledge, initiation and motivation to lead to tourism and culture organization.

#### (2) Department of National Heritage

##### a. Administrative Structure

Department of National Heritage is under the administrative structure of Ministry of Tourism and Culture. This is administered by the federal government.

##### b. Competent Authority

The duties and responsibilities of the Department of National Heritage are as follows;

1. Preservation and reservation of the National Heritage.
2. Law enforcement under the Heritage act 2005.
3. Registration for the National Heritage.
4. Publication the research of heritage and all such reference.
5. Research and development of heritage.
6. Plan, support and develop the activities relating to heritage.
7. Oversee the Malaysians heritage site.
8. Take a role in the world heritage registration or memorable such as the monument of memory or world culture heritage.

Moreover, the Department of heritage has responsibility to contact and make the convenience to the National Heritage Council that already said its responsibility above according to Section 4 Part 8 of the heritage Act 2005

#### (3) Department of Museum

##### a. Administrative Structure

Department of Museum is under the administrative structure of project of the Ministry of Tourism and Culture. Under the supervision and administration of the federal

government. The Department of National Museum is primarily responsible for preserving and disseminating knowledge about history, Malaysia's cultural heritage and natural heritage

#### b. Competent Authority

The main responsibility of the Department is to keep, preserve and to spread out the knowledge of history, cultural heritage and natural heritage of Malaysia. The duty and responsibility are as follows;

1. To collect and preserve the country's historical, cultural and natural heritage.
2. To show or make exhibition and also publish research relate to collecting object in the museum.
3. To show or make exhibition from time to time.
4. Make the museum to be site tourist or to appeal the tourist.
5. To provide knowledge and collect historical database, natural heritage and cultural heritage

Furthermore, its responsibility is also to do any operation related to ideal object and up to date. Provide the complete equipment, laboratory, trainee in the field related to museum and keep the interesting exhibition in the database of the Museum.

### 3.8 Laws on Bureaucracy Enhancement

#### 3.8.1 Introduction

##### (1) Overview of Governmental System in Malaysia

The federal government holds various portfolios including external affairs, defense, internal security, civil and criminal law, citizenship, finance, industry, health and education. However, the Federal Government shall exercise its power to enact federal law that prevails state laws under certain circumstances. The administrative power shall be under the advice of the Cabinet with the Chairman of the Cabinet, the Prime Minister. The Prime Minister is elected by the majority votes from House of Representatives, whereas, Ministers could be elected or chosen from the members of Houses of Parliament<sup>487</sup> and the Yang di-Pertuan Agong shall act in his power to appoint the Prime Minister<sup>488</sup> and Ministers in compliance with advice of the Prime Minister.<sup>489</sup>

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<sup>487</sup> The Commonwealth of Nation, retrieved March 18, 2016 from <http://www.commonwealthofnations.org/sectors-malaysia/government/>

<sup>488</sup> Malaysia Constitution 1957, section 40A.

<sup>489</sup> Malaysia Constitution 1957, section 43.

Furthermore, the ministry of the Federation are made up of 24 Ministry in total, which are Ministry of Finance, Ministry of Education, Ministry of Transportation, Ministry of Plantation, Industries and Commodities, Ministry of Home Affairs, Ministry of Communication and Multimedia, Ministry of Energy, Green Technology and Water, Ministry of Rural and Regional Development, Ministry of Higher Education, Ministry of International Trade and Industry, Ministry of Science, Technology and Innovation, Ministry of Natural Resources and Environment, Ministry of Tourism and Culture, Ministry of Agriculture and Agro-based Industry, Ministry of Defense, Ministry of Works, Ministry of Health, Ministry of Youth and Sports, Ministry of Human Resources, Ministry of Domestic Trade, Cooperative and Consumerism, Ministry of Urban Wellbeing, Housing and Local Government, Ministry of Woman, Family and Community Development, Ministry of Foreign Affairs and Ministry of Federal Territories.<sup>490</sup>

## (2) Policies, Scheme and Objectives of Development and Structure of Malaysian Bureaucracy

The reform of Malaysian bureaucracy was not effected or forced to happen as a result of political disruption or economic crashes like any other countries. The policy on bureaucracy reform of Malaysia is one of objectives under the planned schemes rendered by its government since 1957. To facilitate and to support all Malaysian people is the underlying principle and fundamental purpose to succeed in motivating and driving the economic growth of the country. Between years 1690-1979s, the big reformation of the country emphasizes on legislative aspect and governmental-administrative re-organization and development for the purpose of efficient resolutions in governmental sector. The Federation, state and local governmental administration raised the issues on bureaucracy development to discuss and to determine the exact plan for the “top-down” and “bottom up” implementations. In the period of year 1980-1990s, in the free trade economic era, private sectors had played the important role in directing the country’s economic growth. The government shifted their attention to the management of the public tasks while the private sectors took part in the economic growth of the country.<sup>491</sup>

In the significant essence of Malaysian civil service development, the heart is laid in the Government Transformation Programme (GTP), which is under the supervision and control of Prime Minister’s Department. The GTP is practically implemented and organized under the pursuit of the Performance Management and Delivery Unit, PEMANDU. The fundamental assembly of GTP is intuitive and ingenious and come from the determination

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<sup>490</sup> Office of the Prime Minister, *Federal Ministries*, retrieved March 18, 2016 from <https://www.pmo.gov.my/home.php?menu=ministries&page=1799>

<sup>491</sup> MDGD, “Civil Service Reform Paper”, p.22, retrieved March 10, 2016 from <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN001183.pdf>

of problems that need to be resolved the most in order to give importance and resolution to such problems first. In doing this, the consultation with the stakeholders, from the sectors of ministry to the officers, is significantly needed. After determining the 7 National Key Result Areas (NKRAs), namely, 1) reduction of crime, 2) anti-corruption, 3) students' study result improvement, 4) upgrading livelihood of low-income people, 5) higher rate of cost of living, 6) improvement of infrastructure in rural area, and 7) improvement of mass transportation in the city. The Government has come up with the National Key Results Areas ("NKRAs"), and, additionally, equipped with another method called a Ministerial Key Results Area ("MKRA"), which shall address and deal with certain concerns not covered or taken care of by NKRAs.<sup>492</sup> NKRAs is under the supervision and arrangement of the Cabinet directly reported to the Prime Minister for the purpose of indicating and showing the success or failure of plan implementation and execution. The plans are deliberated into two different range of time, i.e. long-term and short-term periods. For example, the problems on the high cost of living and the restrictions in the accessible services provided to the people are emergency initiatives to be solved in short-term plan.<sup>493</sup>

The underlying reasons why Malaysia could reach and succeed in developing public and civil services is the dramatic changes and progressive evolution in the area of overall structure, technical management, skills and knowledge, refreshing attitudes and implementation. The reformation of Malaysian public services concentrates on administrative enhancement which is the acceptance and employment of new mindset and thinking. The scheme emphasizes on reaching the basic seven valuable components of civil officials rendering public services, which are quality, productivity, innovativeness, discipline, integration, accountability and professionalism. For all those stated values, they shall render and deliver forward-looking, flexibility and proficient services and be able to answer and meet the needs and demand of market to reach the developing goals in rapid changing world.<sup>494</sup>

### 3.8.2 Relevant Legislations

Law and legislation relating to governmental system and public services in Malaysia is Malaysian Constitution 1957, which states the matter regarding Public Services in Part X starting from Section 132 to Section 148.

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<sup>492</sup> Government Transformation Programme, *GTP Overview*, retrieved March 18, 2016 from [http://www.pemandu.gov.my/gtp/About\\_GTP-@-GTP\\_Overview.aspx](http://www.pemandu.gov.my/gtp/About_GTP-@-GTP_Overview.aspx)

<sup>493</sup> Government Transformation Programme, *NKRAs Overview*, retrieved March 18, 2016 from [http://www.pemandu.gov.my/gtp/What\\_Are\\_NKRAs%5E-@-NKRAs\\_Overview.aspx](http://www.pemandu.gov.my/gtp/What_Are_NKRAs%5E-@-NKRAs_Overview.aspx)

<sup>494</sup> MDGD, "Civil Service Reform Paper", pp. 21-22, retrieved March 10, 2016 from <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN001183.pdf>

The definition given under Part X in relation to the public services are the armed forces, the judicial and legal service, the general public service of the Federation, the police forces, joint services, the public service of each State and the education service.<sup>495</sup>

Concerning the proficient and effective public service, the Constitution has mentioned that there shall be the establishment and formation of the Armed Forces Council<sup>496</sup>, Judicial and Legal Service Commission<sup>497</sup>, Public Service Commission, Police Forces Commission<sup>498</sup>, Education Service Commission.<sup>499</sup>

However, subject to the Part X of the Constitution, the public services shall not be taken to comprise the office of any member of the administration in the Federation or a State; or the office of President, Speaker, Deputy President, Deputy Speaker or member of either House of Parliament or of the Legislative Assembly of a State; or the office of judge of the Supreme Court or a High Court; or the office of member of any Commission or Council established by this Constitution or any corresponding Commission or Council established by the Constitution of a State; or such diplomatic posts as the Yang di-Pertuan Agong may by order prescribe, being post which but for the order would be posts in the general public service of the Federation.<sup>500</sup>

Additionally, the Federation and the States may have friendly relationship and mutual cooperation between each other in order to rendering Joint Services. To what extent, the Joint Services could be employed and engaged between the Federation and one State or more than that, as the case may be and requested by the State involving to the issue, conditional on the ruling federal law.<sup>501</sup> Upon Joint Services, the public services remuneration payable by the Federation and the State (or States) involved and related, shall be determined by the agreement and memorandum of understanding made by those engaging State (s) and subject to federal laws. In the light of default of agreement or proportion of remuneration paid shall be deemed in the administration of the Commission whose owes the exclusive jurisdiction over the matter.<sup>502</sup>

Furthermore, under Part X of Public Services of the Constitution, it has referred to and mentioned that all person appointed in the public services of the Federation shall act and comply with the terms and conditions binding by the employment agreement and be

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<sup>495</sup> Malaysia Constitution 1957, section 132, subsection 1.

<sup>496</sup> Malaysia Constitution 1957, section 137.

<sup>497</sup> Malaysia Constitution 1957, section 138.

<sup>498</sup> Malaysia Constitution 1957, section 140.

<sup>499</sup> Malaysia Constitution 1957, section 141A.

<sup>500</sup> Malaysia Constitution 1957, section 132, subsection 3.

<sup>501</sup> Malaysia Constitution 1957, section 133, subsection 1.

<sup>502</sup> Malaysia Constitution 1957, section 133, subsection 2.



treated fairly.<sup>503</sup> Furthermore, there are provisions regarding the protection to the rights to receive pensions,<sup>504</sup> excluding the Attorney General or, if provisions for the manner of his appointment and removal from office is specifically included in the Constitution of the State, or if he is appointed otherwise than from among the members of the judicial and legal service or of the public service of the State, the legal adviser of any State,<sup>505</sup> a member of the personal staff of the Yang di-Pertuan Agong or of a Ruler or Yang di-Pertua Negeri; or in the case of Malacca and Penang, if provision is made by State law for their appointment, the President of the Religious Affairs Department; the Secretary of the Religious Affairs Department; the Mufti; the Kadi Besar; or a Kadi<sup>506</sup> are also excluded from the scope of application.<sup>507</sup>

When looking through and considering Part X of the Constitution, the principles for the governmental system and public service officers can be stated into two part separately as follow:

#### 1. Legislations and Regulations regarding Public Services Commission

The Constitution has laid down the authority and jurisdiction of the Public Services Commission, as the organization holding power and jurisdiction over public services matter.<sup>508</sup> The qualification, sources, appointment and administration work as well as the general provisions and condition of the Commission under the Part X of the Constitution.<sup>509</sup> The period and the remuneration of such Commission are respectively stated.<sup>510</sup>

The remuneration, privileges and immunity, including any other liabilities occurring in relation to acting in duty and within their responsibilities, shall be exempted and protected by Service Commissions Act 1957.

#### 2. Legislations and Regulations regarding Officers

The Constitution has stated and laid down the fundamental principles and qualifications of the officers, including the power to appointment, assistance, reduction in rank or dismissal from duty, and pensions and retirement benefits.

##### A. The Qualifications and the Conditions of Persons in Public Services

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<sup>503</sup> Malaysia Constitution 1957, section 136.

<sup>504</sup> Malaysia Constitution 1957, section 147.

<sup>505</sup> Malaysia Constitution 1957, section 132, subsection 4(b).

<sup>506</sup> The Kadi Besar and a Kadi are the judges nominated for the cases under Islamic law, for example in Kedah, the Kadi Besar and a Kadi may be appointed by the Ruler under the Mahkamah Syariah Enactment 1979.

<sup>507</sup> Malaysia Constitution 1957, section 132, subsection 4(b).

<sup>508</sup> Malaysia Constitution 1957, section 139.

<sup>509</sup> Malaysia Constitution 1957, section 142.

<sup>510</sup> Malaysia Constitution 1957, section 143.

The Constitution has said and determined that the qualifications and conditions for appointment of service of persons shall regulated and governed by federal law and subject to the provisions of such laws. The Yang di-Pertuan Agong shall hold the authority to legislate any new regulations in relation to the qualification for appointment and condistions of service of persons in the public services.<sup>511</sup>

Furthermore, the identification concerning qualifications and conditions of appointment of any each State may be under the regulations of state law of such State and as the same manner, the Yang di-Pertuan Negeri could exercise his authority to identify and direct the qualification of persons in public services in each State as well.<sup>512</sup>

#### B. The Appointment of Persons in Public Services

The appointment of persons in duty and public services shall be under the authority and jurisdiction of the Yand di-Pertuan Agong, unless otherwise stated in the Constitution. In the case of the appointment of persons in each State, the Yang di-Pertuan Negeri is the person certified to appoint every person of public services, except for the Constitution of the State has expressly said in different manner.<sup>513</sup>

Under Section 132 of the Constitution, the Yang di-Pertuan Agong has the power to legislate two more laws giving details regarding the appointment and offences against persons in public services and officers as follows:

(1) Public Officers Appointment Promotion and Termination of Service Regulations 2012 states and mentions the underlying principles, steps and systems of appointment, promotion and termination of persons in public services to be in compliance with the Constitution.

(2) Public Officers (Conduct and Discipline Regulations 1993) states and mentions the steps and approaches of investigation and prosecution under misconducting claims against persons in public services.

#### C. Secondment of Officers

Should there be any requests from the State or any local governmental authority or any other governmental sectors or organizations in or outside Malaysia, the Federation may exercise their authority and discretion giving an order to persons in public services for the purpose of rendering their services in the State or any local governmental authority or any other governmental sectors or organizations as it is needed.<sup>514</sup>

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<sup>511</sup> Malaysia Constitution 1957, section 132, subsection 2.

<sup>512</sup> Malaysia Constitution 1957, section 132, subsection 2.

<sup>513</sup> Malaysia Constitution 1957, section 132, subsection 2A.

<sup>514</sup> Malaysia Constitution 1957, section 134.

#### D. Restriction on dismissal and reduction in rank

The Malaysian Constitution has clearly stated regarding the reduction in rank and dismissal from work under Section 135. To what it is extent, no member, officers or persons in public services (except for military) shall be dismissed and reduced in rank unless it is stated by legislature of any State, other that Penang and Malacca, may make to provide that all powers and functions of a Public Service Commission of such State, be exercised by a Board appointed by the Ruler of the State. Furthermore, the said Section shall not be applied to members or officers in public services specified in Part X of the Constitution who are demised or reduced in rank by an authority empowered by the Commission to regulate officers in such public service.<sup>515</sup>

No dismissal or reduction in rank shall be done or processed without prior reasonable opportunity to clarify or of being heard. Provided that the cause of action are described below for the reasons as follows;<sup>516</sup>

(a) where a member of such a service is dismissed or reduced in rank on the ground of conduct in respect of which a criminal charge has been proved against him;<sup>517</sup> or

(b) where the authority empowered to dismiss or reduce in rank a member of such a service is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to carry out the requirements of this Clause;<sup>518</sup> or

(c) where the yang di-pertuan Agong, or, in the case of a member of the public service of a State, the Ruler or yang di-pertua negeri of that State, is satisfied that in the interests of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this Clause;<sup>519</sup> or

(d) where there has been made against a member of such a service any order of detention, supervision, restricted residence, banishment or deportation, or where there has been imposed on such a member any form of restriction or supervision by bond or otherwise, under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls.<sup>520</sup>

In addition, where the service of a member of such a service is terminated in the public interest under any law for the time being in force or under any regulation made by the Yang di-pertuan Agong under Clause (2) of Article 132, such termination of service shall

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<sup>515</sup> Malaysia Constitution 1957, section 135, subsection 1

<sup>516</sup> Malaysia Constitution 1957, section 135, subsection 2.

<sup>517</sup> Malaysia Constitution 1957, section 135, subsection 2.a.

<sup>518</sup> Malaysia Constitution 1957, section 135, subsection 2.b.

<sup>519</sup> Malaysia Constitution 1957, section 135, subsection 2.c.

<sup>520</sup> Malaysia Constitution 1957, section 135, subsection 2.d.

not constitute dismissal whether or not the decision to terminate the service is connected with the misconduct of or unsatisfactory performance of duty by such member in relation to his office or the consequences of the termination involved an element of punishment.<sup>521</sup>

Besides, members of any general public services of the Federation, the joint public services and the public services of each State shall not be dismissed or reduced in rank or suffer from any other disciplinary method for caused of action committed by him or her in the exercise of a judicial function without prior to the approval of the Judicial and Legal Service Commission.<sup>522</sup>

#### E. Protection of Pension Rights

The monies and remuneration payable to the members or persons, or even spouse and children, acting in the public services shall be called as pension, gratuity or any other types of payments made in the term of allowance or in lieu of money benefits (hereinafter shall be referred as award) as for death shall be applied by beneficial and favorable laws and regulations announced and effect on or before Merdeka Day.<sup>523</sup> Also, the rights to claim for an award payable to the member or person could be subject to the option selected by person whom made for it and under laws favorable to such person. He is eligible to opt his own decision.<sup>524</sup>

Consequently, the Pensions Act 1980 (Act no. 227), of which the purpose is to provide for the administration of pensions, gratuities and other benefits for officers in the public service and their dependants, was enacted and is deemed to have come into force backwards to January 1, 1976. According to this Act, the compensation for past service or any pension, gratuity or other benefit is not considered as an absolute right especially where the Yang di-Pertuan Agong is satisfied that an officer has been guilty of negligence, irregularity or misconduct, the Yang di-Pertuan Agong may reduce or with hold a pension, gratuity or other benefit for which the officer would have been eligible.<sup>525</sup>

Pension, gratuity or other benefit granted under this Act or regulations made thereunder shall be charged on the Federal Consolidated Fund. For the purposes of this Act, pension, gratuity or other benefit does not include any cash award granted in lieu of accumulated vacation leave to an officer whose salary is not paid out of the Federal Consolidated Fund.<sup>526</sup>

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<sup>521</sup> Malaysia Constitution 1957, section 135, subsection 2.

<sup>522</sup> Malaysia Constitution 1957, section 135, subsection 3.

<sup>523</sup> August 31, 1957 is the date in which the independence from England has been declared.

<sup>524</sup> Malaysia Constitution 1957, section 147.

<sup>525</sup> Pensions Act 1980, Section 3.

<sup>526</sup> Pensions Act 1980, Section 4.

Concerning the power of the Yang di-Pertuan Agong, the regulations for the purposes of this Act can be made by him<sup>527</sup> and at the same time, he may grant a pension, gratuity or other benefit to a pensionable officer on<sup>528</sup> (1) compulsory retirement for officers in public service who attain the age of sixty years<sup>529</sup>; or (2) optional retirement for forty-year-old officers who has submitted the application and has got the consent, from the Yang di-Pertuan Agong, to retire<sup>530</sup> after completing a period of not less than ten years' reckonable service; or (3) retirement of a federal officer who is required by the Yan di-Pertuan Agong to retire at any age on ground of national interest or in the interest of the public service.<sup>531</sup> Moreover, The Yang di-Pertuan Agong may grant a pension, gratuity or other benefit to a pensionable officer if the retirement is under certain conditions,<sup>532</sup> in other words, woman officer who is below forty-five years of age or being a male officer who is below fifty years of age is appointed by or with the approval of the Government to serve in any organization formed by the Government or any State Government having any interest therein, or in any international organization of which the Government is a member.<sup>533</sup>

### **3.8.3 Governmental Authority**

According to the administrative structure of the governmental authorities of Malaysia on the enhancing-government service and public service proficiency can be presented in details as follow:

#### **1. Public Service Commission – PSC**

Public Service Commission (hereinafter referred as the “Commission”) is the official organization established under Section 139 of the Malaysian Constitution.

##### **A. Administrative Structure**

##### **a.1 Components of Public Service Commission**

The Public Service Commission is comprised of the chairman, the deputy chairman and other members not less than 4 persons except for the order of the Yang di-Pertuan Agong be otherwise provided in difference from so. However, the members of the Commission shall not exceed 30 members.<sup>534</sup> Either the chairman or the deputy chairman shall be, and both may be, appointed from among persons who are, or have at any time within the period of five years (immediately preceding the date of their first appointment

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<sup>527</sup> Pensions Act 1980, Section 5.

<sup>528</sup> Pensions Act 1980, Section 9(1).

<sup>529</sup> Pensions Act 1980, Section 10.

<sup>530</sup> Pensions Act 1980, Section 12.

<sup>531</sup> Pensions Act 1980, Section 11.

<sup>532</sup> Pensions Act 1980, Section 9(2).

<sup>533</sup> Pensions Act 1980, Section 12A.

<sup>534</sup> Malaysia Constitution 1957, section 139, subsection 4.

been).<sup>535</sup> Members of any of the public services and the member or any of the public services appointed to be chairman or the deputy chairman shall not be eligible for any further appointment in any positions in the service of the Federation other than as a member of a Commission under Part X of the Malaysian Constitution.<sup>536</sup>

#### a.2 Source of Public Service Commission

The members of the Commission are generally appointed by Yang di-Pertuan Agong in his sole discretion, whereas the appointment processes shall be done under the consideration of the Prime Minister taken into account and the consultation with Ruler as well.<sup>537</sup>

#### a.3 Compliance and Reports of Public Service Commission

The Public Service Commission shall be monitored and tracked under the authority and realm of the Prime Minister and the Office of the Prime Minister and, furthermore, there shall be annual reports, in relation to the public service activities and works, submitted to the Yang di-Pertuan Agong and copies of the said reports handed before both Houses of Parliament.<sup>538</sup> In addition, the copies of every reports made and send to the Ruler or Yang di-Pertua Negeri of each State for the purpose that every State shall be acknowledged and received the services rendered for the benefits of Malaysian people. Then, the Ruler or Yang di-Pertua Negeri shall lay the reports before the Legislative Assembly.<sup>539</sup>

#### B. Competent Authority

The Commission's core duties and responsibilities are to monitor any officers or persons of General Public Service of the Federation and all the Joint Services, including any persons of public service within Malacca, Penang and in certain States (in the case where specific laws in force of that State indicate that the Commission shall hold such duties, functions and responsibilities)<sup>540</sup>, other than the Auditors General.<sup>541</sup>

Additionally, the jurisdiction of the Public Service Commission shall extent to members of the general public service of the Federation who are in a federal department in the State of Sabah or Sarawak and members of public service of the State of Sabah or Sarawak who are seconded to the general public service of the Federation. The jurisdiction and power of the Commission shall cover the members of the public service of the State of

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<sup>535</sup> Malaysia Constitution 1957, section 139, subsection 5.

<sup>536</sup> Malaysia Constitution 1957, section 139, subsection 6.

<sup>537</sup> Malaysia Constitution 1957, section 139, subsection 4.

<sup>538</sup> Malaysia Constitution 1957, section 146, subsection 1.

<sup>539</sup> Malaysia Constitution 1957, section 146, subsection 2.

<sup>540</sup> Malaysia Constitution 1957, section 139, subsection 2.

<sup>541</sup> Malaysia Constitution 1957, section 139, subsection 1.

Sabah or Sarawak serving in federal posts or in any posts which have become federal posts in that State and who exercises the option to the members of the general public service of the Federation.<sup>542</sup>

Furthermore, the functions under the Commission's responsibilities and duties are to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer ("transfer" does not include transfer without change of rank within a department of Government<sup>543</sup>) and exercise disciplinary control over members of the service or services to which its jurisdiction extends.<sup>544</sup> However, Federal law may provide for the exercise of other functions by any such Commission.<sup>545</sup>

Moreover, the Commission also have power concerning the appointment of high-level officers, in other words, the Commission may give recommendation to Yang di-Pertuan Agong in designating somebody as special posts and any post held by the head or deputy head of a department or by an officer who in his opinion is of similar status.<sup>546</sup> However, before carrying out such designation, Yang di-Pertuan Agong shall consider the advice of the Prime Minister and the Prime Minister may refer the recommendation back to the Commission in order that it may be reconsidered.<sup>547</sup>

## **2. Public Service Department – PSD**

Public Service Department was found for the first time in 1934, with the established name as the Malayan Establishment Office in Singapore and later moved to Kuala Lumpur following the formation of the Malayan Union. On July 1, 1954, there was an significant establishment of the Federal Establishment Office through the merger of the Malaya Establishment Office, Service Branch of the Chief Secretary's Office and the Establishment Division and Federal Treasury. On 1968, the Federal Establishment Officer has been changed the name to the Department of Public Service and is under the supervision of Ministry Department.<sup>548</sup>

### **A. Administrative Structure**

The overall organization is under the supervision and duties of Director-General of Public Service Development. The Director-General of Public Service Development shall be

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<sup>542</sup> Malaysia Constitution 1957, section 139, subsection 1A.

<sup>543</sup> Malaysia Constitution 1957, section 144, subsection 7.

<sup>544</sup> Malaysia Constitution 1957, section 144, subsection 1.

<sup>545</sup> Malaysia Constitution 1957, section 144, subsection 2.

<sup>546</sup> Malaysia Constitution 1957, section 144, subsection 3.

<sup>547</sup> Malaysia Constitution 1957, section 144, subsection 5.

<sup>548</sup> Public Service Department of Malaysia, retrieved March 17, 2016, from [http://www.jpa.gov.my/index.php?option=com\\_content&view=article&id=54&Itemid=19&lang=en](http://www.jpa.gov.my/index.php?option=com_content&view=article&id=54&Itemid=19&lang=en),

responsible for the public administration of National Institute of Public Administration Division and Research Planning and Policy Division.<sup>549</sup>

Additionally, Deputy Director-General of Public Service Development is responsible and takes care of Service Division and Organization Development Division, Human Capital Development Division and Remuneration Division. Furthermore, there is Deputy Director-General of Public Service Operation managing and administering Post-Service Division, Public Service Transformation Division, Service Management Division, Psychology Management Division and Information Management Division.<sup>550</sup>

#### B. Competent Authority

The core responsibilities and objectives of Public Service Department mainly lays in the values to develop the best competent human capital and resources to meet the public service's strategic needs through dynamic training policies and sponsorship programmes and to systematically manage public service with the fundamental aims of best manner in providing public services. Moreover, in order to achieve the best results and benefits rendered to people, the formulation of policies and guidelines relating to psychology services according to current needs to enhance and enrich human resources development in the public services is accomplished concurrently with the emphasis on the welfare of retirees and pension recipients through the improved policies on public service as well as the technology in human resource management.<sup>551</sup>

### 3. The Malaysian Administrative and Manpower Planning Unit – MAMPU

The Malaysian Administrative and Manpower Planning Unit, or referred as MAMPU, is under the management and authority of the Department of Prime Minister. The establishment of MAMPU was of underlying intention and objectives to develop and improve the advancement in Development Administration in Malaysia by submitting and recognizing the reports and researches in relation to the professional public works and services. By all mean, the said reports and researches lead to the formation of Development Administrative Unit – DAU in year 1966 to be able to the role in public service development and improvement, and later the said unit had been expanded and reorganized to be the Implementation Coordination Development Administrative Unit – ICDAU, with the responsibilities and functions of coordination and planning the enhancement and success in human resource. In year 1977 and 1986, the roles and functions in development and improvement in human resource had been transferred to the different department.

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<sup>549</sup> Public Service Department of Malaysia, retrieved March 17, 2016, from [http://www.jpa.gov.my/index.php?option=com\\_content&view=article&id=246&Itemid=26&lang=en](http://www.jpa.gov.my/index.php?option=com_content&view=article&id=246&Itemid=26&lang=en)

<sup>550</sup> *Ibid.*

<sup>551</sup> Public Service Department of Malaysia, retrieved March 17, 2016, from [http://www.jpa.gov.my/index.php?option=com\\_content&view=article&id=246&Itemid=26&lang=en](http://www.jpa.gov.my/index.php?option=com_content&view=article&id=246&Itemid=26&lang=en)



Afterwards, MAMPU would be able to focus and emphasize on modernizing and thriving in administrative framework and also to render and provide useful advices to other departments and sectors. The unit was well known and recognized as MAMPU.<sup>552</sup>

#### A. Administrative Structure

The Director General is the leader in MAMPU, who is the key person in governmental unit, and there are the Deputy Director General – Management Transformation and Modernization and Deputy Director General – Information and Communication Technology.<sup>553</sup>

The structure of MAMPU is comprised of divisions, namely, Planning and Corporate Communication Division, Management and Human Resource Division, Management Development Division, Inspectorate and Recognition Division, Public Sector Transformation Division, ICT Compliance Division, ICT Policy and Planning Division and ICT Shared Services Division.<sup>554</sup>

#### B. Competent Authority

The main responsibilities of MAMPU are to (1) increase the awareness in the public sector agencies of the importance of productivity measurement and improvement, (2) to provide advisory and consultancy services to government agencies for productivity measurement and improvement; to conduct studies on behavioral and other aspects of the working environment that could affect productivity, and (4) to monitor productivity measurement and improvement efforts by government agencies.<sup>555</sup>

### 4. National Institute of Public Administration

National Institute of Public Administration, or well known as INTAN, is the institution under the Public Service Department. INTAN was first established for the purpose of training institution in Port Dickson in September 1959 and then was known for the name of Staff Training Centre. This National Institute has been of service and duty of training and developing officers regarding the real estate or land management, financial management, the administration and management of local authorities and local government. In the year 1973, National Institute of Public Administration or INTAN was given the new name, INTAN, and expanded its campus through different locations and areas with the head quarter located in Kuala Lumpur (formed in the year 1984) and then was recognized as the central for

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<sup>552</sup> the Malaysian Administrative and Manpower Planning Unit, retrieved March 17, 2016, from <http://www.mampu.gov.my/web/en/history>

<sup>553</sup> the Malaysian Administrative and Manpower Planning Unit, retrieved March 17, 2016, from <http://www.mampu.gov.my/web/en/directory2>

<sup>554</sup> MAMPU, <http://www.mampu.gov.my/web/en/sitemap.jsessionid=8F03622E2ADCDEAA9E1DA4854A9AD68C>

<sup>555</sup> MDGD, “Civil Service Reform Paper”, p.22, retrieved March 10, 2016 from <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN001183.pdf>

training in the center region in the year 1998. Afterwards, the Institute has founded the new campus located in Sarawak in 1999 and Sabah in 2001.<sup>556</sup>

#### A. Administrative Structure

National Institute of Public Administration's administrative structure is composed of Director of INTAN, who is responsible for monitoring registration matter, Corporate and International Unit, Northern Regional Campus – INTURA, Southern Regional Campus – INTIM, INTAN Sabah Campus, INTAN Sarawak Campus. Whereas, Senior Deputy Director is responsible for Cluster for Public Policy and Governance, Cluster for Economics and Public Finance, Cluster for Expertise Development, Cluster for Leadership and Executive Development, Cluster for Professional Ethics and Integrity, Cluster for Administration Development, and Cluster for Innovative Management Technology (i-IMATAC).<sup>557</sup>

#### B. Competent Authority

The National Institute of Public Administration has the authority to provide training to officer under the Public Service Department to increase knowledge, competency and skills. It also has the mission to adjust the attitude of the officers to be encouraged for their self-development and to be promoted to the higher position. In addition, it also has the duty to foster positive social values and good morality in work. In this regard, there are training programmes in various sessions such as training for top management, post-graduate training, training on Development Administration Circulars, international training programmes, special departmental training and skills upgrading training programmes.<sup>558</sup>

### 3.9 Laws on Government Proceedings

#### 3.9.1 Introduction

Considering the government administrative system of Malaysia, it is seen that Malaysia has been influenced the political structure except for the government part from England which is the rule of the parliamentary system. Malaysia has a central government or federal government, state government and local government. The structure in this system affects the public administration system to all governments. The federal government will provide in form of the operations in accordance with the policies of the federation. Each state has a structural division of the adapted centrally. The local government is the government that is closer to the people.

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<sup>556</sup> <https://www.intanbk.intan.my/iportal/index.php/en/about-intan>

<sup>557</sup> <https://www.intanbk.intan.my/iportal/index.php/en/about-intan/organizational-structure>

<sup>558</sup> MDGD, "Civil Service Reform Paper", p.25, retrieved March 10, 2016 from <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN001183.pdf>

Malaysia is divided into 13 states (Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Selangor, Terengganu, Sabah and Sarawak) with 3 territories (Kuala Lumpur – national capital, Putrajaya – administrative center of the federal government and Labuan – offshore financial center). Each state has its own government – state government. But considering the way the federal government and the state government govern, it could say that the using of power of both the state government and the federal government are fall under the provisions of the same law which is the Government Proceedings Act 1956, except for the government of Sabah and Sarawak that not apply some of provisions of such Act to their states. In addition, the local government administrative practices would fall under the Local Governance Act 1976, except for the local government of Sabah and Sarawak. Each of the Act stipulates the power and duty of the authorities to practice and to use power by law to take action or proceeding in any administrative way, as to be presented next.

### **3.9.2 Relevant Legislations**

#### **1. The Government Proceeding Law enforced in the Federal Government and the State Government**

Law enforce in administrative district of federal government and state government is The Government Proceeding Act 1956 which effective for first time in 1956 as ordinance No. 58. The following year, It had several amendments until become an act in 1988 named The Government Proceeding Act 1956 (Act 359) which effect on 1 December 1988.

This act is the combination between substantive law and procedural law. While some provisions are about the right of the government to sue, the claims enforceable by proceedings against government, the liability of the government in tort, the limits of liability of the government and the exercise of public duties and the exception for liability. Some provisions are about jurisdiction and procedure in the High Court. Furthermore, other important consideration is some provisions in this act do not apply to Sabah and Sarawak which in this case must consider specific provisions of each state separately.

##### **A. The right of the government to sue**

Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.<sup>559</sup>

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<sup>559</sup> The Government Proceeding Act 1956, Article 3

B. The claims enforceable by proceedings against Government<sup>560</sup>

Subject to this Act and of any written law, any claim against the Government which:

B.1 is founded on the use or occupation or the right to the use or occupation of State land; or<sup>561</sup>

B.2 arises out of the revenue laws;<sup>562</sup> or

B.3 arises out of any contract made by the authority of the Government which would, if such claim had arisen between subject and subject, afford ground for civil proceedings; or<sup>563</sup>

B.4 is a claim (other than a claim in tort) for damages or compensation not included in the preceding paragraphs which might lawfully be enforced by civil proceedings as between subject and subject, shall be enforceable by proceedings against the Government for that purpose in accordance with this Act.<sup>564</sup>

C. Liability of the government in tort

The Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that Laws of Malaysia. Besides, in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.<sup>565</sup>

D. The limits of liability of the government

In case officer does something wrong or omit the duty which causes government to be sued. Government may cite the provision to limit its liability in the following case.

D.1 In respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

D.2 Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act,

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<sup>560</sup> The Government Proceeding Act 1956, Article 4

<sup>561</sup> The Government Proceeding Act 1956, Article 4 (A)

<sup>562</sup> The Government Proceeding Act 1956, Article 4 (B)

<sup>563</sup> The Government Proceeding Act 1956, Article 4 (C)

<sup>564</sup> The Government Proceeding Act 1956, Article 4 (D)

<sup>565</sup> The Government Proceeding Act 1956, Article 5

neglect or default of such officer, apply in relation to the Governmental it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

D.3 No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

D.4 No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid. For the purposes, the expression "appropriate financial officer" means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.<sup>566</sup>

#### E. The exercise of the public duties

One of the important duties of the federal government and the state government is the exercise of the public duties which some acts or omits may cause damage to people. This article mention about activities that are the exercise of the public duties includes, except of the exercise of the public duties.

This act give definition of "exercise of the public duties" to include (1) the construction, maintenance, diversion and abandonment of railways, roads, bridal-path or bridges; (2) the construction, maintenance, and abandonment of schools, hospitals or other public buildings; (3) the construction, maintenance, and abandonment of drainage, flood prevention and reclamation works; and (4) the maintenance, diversion and abandonment of channel of rivers and waterways.<sup>567</sup>

#### F. The limit of the liability of the government to exercise of the public duties

This act separates the provisions about the limit of the liability of the government to exercise of the public duties from other article. Namely, in case that the government or the officer does, omits or refuses to do something about the exercise of the public duties, the government and the officer shall prevent to be subjected except for breaking contract. But in case of exercise of the public duties mention above which in government's responsibility. The government may be claimed for loss or damage or

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<sup>566</sup> The Government Proceeding Act 1956, Article 6 (5)

<sup>567</sup> The Government Proceeding Act 1956, Article 7 (2)

compensation from negligence act.<sup>568</sup> Anyway, the government must not responsible to liability more than the local authority does.

## **2. The Government Proceeding Law enforced in the State Government and the Local Government.**

The west Malaysia administrative district (The Peninsular Malaysia)

The law enforce in this part of Malaysia is the Local Government Act 1976 (Act No. 171). This act only applies to all 11 states in the Peninsular Malaysia – Kelantan, Kedah, Terengganu, Perlis, Pahang, Malacca, Penang, Perak, Negeri Sembilan, Johor and Selangor – which Sabah and Sarawak are not included.

This act generally applies to the Peninsular Malaysia with effective date as notify in the gazette. However, its preliminary mention especially about the effective date that each state, after consultation with the Minister, can appoint its own come into force date, area and provision to be enforced by notify in the gazette.<sup>569</sup>

This act mentions about procedure and management of local government, power of local authority, officers and employees of local authority, public service and account and audition. This act separates administration into 2 type, municipality and rural area. Nowadays, it can be seen that local government has been divided into 4 type, city with city hall or city council as main authority, municipality with municipal council as main authority, rural area with district council as main authority and special and modified local council with corporation or development board or development authority as main authority.

### **A.1 Appointment and qualification of the officer**

This act has provisions relate to an appointment and qualification of the officer likes the Local Government Ordinance 1961 (enforce in Sabah) and the Local Authorities Ordinance 1996 (enforce in Sarawak) but the most important provision is the appointment of committees in article 28. “Every local authority may from time to time appoint Committees, either of a general or special nature, consisting of a Chairman and such number of Councilors and such other persons as the local authority may think fit, for the purpose of examining and reporting upon any matter or performing any act which in the opinion of the local authority would be more conveniently performed by means of a Committee, and may delegate to any Committee such powers, other than the power to raise money by rates or loans, as it may think fit, and may fix the quorum of any such Committee”.<sup>570</sup>

### **A.2 Power of the local authority**

Generally, the local government has right, duty and responsibility as specify in this act which is the power from law prescribed by general. Except in case of unusual or

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<sup>568</sup> The Government Proceeding Act 1956, Article 7 (3)

<sup>569</sup> The Local Government Act 1976, Article 1

<sup>570</sup> The Local Government Act 1976, Article 28

emergency situation, the local government by the Commissioner of the City of Kuala Lumpur, mayor or president, as the case may be, has an extraordinary power in case of emergency to solve the problem by direct the immediate execution of any work or the doing of any act for safety of life or property and direct that the expenses be paid out of the Local Authority Fund and shall report the same at the next meeting of the local authority.<sup>571</sup>

(1) Power to make the law<sup>572</sup>

Local authority has power to make, amend or repeal the law for better carrying out of the provision of this act;

(1.1) Rubbish, waste or dead animal extermination include control the process;

(1.2) Preserve the public health, and prevent the spread of disease include the quarantine;

(1.3) Inspection and examination of food, drink and ice for sale;

(1.4) Regulate the control and use of markets and the food selling building for prevent nuisances;

(1.5) Regulate the animal slaughter house;

(1.6) Regulate, supervise and license pedlars, hawkers and street trader and prescribe streets or areas which peddling, hawking or street trading shall be prohibited;

Anyway, the local authority has no power to make, amend or repeal the sewage law.

(2) Power to arrest<sup>573</sup>

This act grant the public officer who authorized by the local authority or any police to arrest without warrant any person who commits in his present or whom reasonably believes to have committed any offence under this act or any law–

(2.1) if the name or address of the person is unknown to him and the person declines to give his name and address; or

(2.2) if there is reason to doubt the accuracy of the name or address.

A person arrested under this section shall be detained and shall be brought before a Magistrate's Court within 24 hours unless his name and address are sooner ascertained.

(3) Power to provide public place<sup>574</sup>

A local authority has power to control and maintain the place within the local authority area. The word “public place” means a place that people have their right to

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<sup>571</sup> The Local Government Act 1976, Article 30

<sup>572</sup> The Local Government Act 1976, Article 73

<sup>573</sup> The Local Government Act 1976, Article 121

<sup>574</sup> The Local Government Act 1976, Article 63

use together as define in definition section. For example, a local authority has power to build new public place, to enlarge or to temporarily close public place, to construct a public building in public place and to close the street.<sup>575</sup>

#### A.3 Validity of acts of local authority officers<sup>576</sup>

This act mention about validity of acts of local authority officers in article 31 that all acts of the local authority or any person acting as head of the office such as mayor or president will not invalid just because defect in appointment or disqualification or less number of councilors in authority than prescribe. This provision has same main idea as article 28 of the Local Authorities Ordinance 1996 enforce in Sarawak and article 24 of the Local Government Ordinance 1996 enforce in Sabah.

#### A.4 Obstructing officers or servants of authority in execution of their duties<sup>577</sup>

This act has provisions about obstructing officers or servants of authority in execution of their duties which that any person who at any time obstructs, molests or assaults the Commissioner of the City of Kuala Lumpur, or the Mayor or President, Councilors, officers or employees of a local authority in the performance and execution of their duty or removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding six months or to both.

#### A.5 Liability for acts and omissions

Provision about liability for acts and omissions has been provided in article 123 which can conclude that if any agent, employee, body corporate, director, general manager, secretary or other similar officer of the body corporate does or omits to do something within scope of duty which is an offense then the principal or employer or other person, as the case may be, will be deemed to be guilty unless prove to the satisfaction of the court that having regard to all the circumstances he took all reasonable means and precautions to prevent such act or omission.<sup>578</sup>

#### A.6 Protection of Councilors, officers and employees from personal liability<sup>579</sup>

From the provision about protection of councilors, officers and employees from personal liability, it may conclude that if the commissioner of the city of Kuala Lumpur, Mayor or president, councilor, officer or employee of the local authority or any person acting under the direction of a local authority, with bona fide for purpose of carrying out the

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<sup>575</sup> The Local Government Act 1976, Article 64

<sup>576</sup> The Local Government Act 1976, Article 31

<sup>577</sup> The Local Government Act 1976, Article 112

<sup>578</sup> The Local Government Act 1976, Article 123

<sup>579</sup> The Local Government Act 1976, Article 33



provisions of this act or of any by-laws, rules or regulations, act or omit to do or break a contract which cause damage to other person then any incurred expense shall be borne and paid out of the Local Authority Fund without personal liability.

#### A.7 Public Authorities Protection Act 1948

The Public Authorities Protection Act 1948 [Act 198], shall apply to any action, suit, prosecution or proceeding against any local authority or against any Councilor, officer, employee, servant or agent of any local authority in respect of any act, neglect or default done or committed.<sup>580</sup>

#### B. The East Malaysia Administrative District (The East Malaysia)

##### B.1 State of Sabah

The law enforce in this state is the Local Government Ordinance 1961. This ordinance has effected since 1961 after publication in the gazette then it has several amendment and become law in 1991 (Sabah No. 11 of 1991). This ordinance mentions about the establishment of local government authorities, the composition of authorities, the meetings and proceedings of authorities meetings, the qualification of appointed members, the power of local government authorities, the provision of public service, the maintenance in law and order, the power of the local government authorities and the provision about the local government authorities' income.

##### (1) Appointment and qualification of officers

This ordinance prescribes about officer appointment which separated clearly by title. The executive officers in any rank such as Mayor, President and officer in any position have their own appoint procedure differently. For an executive officer and a treasurer, who may be the same person, must be approved by Minister, have all the powers and perform all the duties of such office under this ordinance.<sup>581</sup> Therefore, the local authority has power to employ the employees or labors as may be required for the performance of its functions under this ordinance

In aspect of qualification of appointed members Subject to the provisions of section 10A of this ordinance<sup>582</sup> every person, not being a company, association or body of persons corporate or unincorporated, and not being under the age of twenty-one years, who (a) is a Malaysian Citizen; (b) has been ordinarily resident in Sabah for the ten years immediately preceding the date of his appointment; (c) is at such date resident or has his normal place of employment in a local Authority area; and (d) has, for the twelve months immediately preceding such date, been ordinarily resident, or had his normal place of

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<sup>580</sup> The Local Government Ordinance 1961, Article 124

<sup>581</sup> The Local Government Ordinance 1961, Article 69

<sup>582</sup> The Local Government Ordinance 1961, Article 10

employment, within such local Authority area; shall be eligible to be appointed as a member for such local authority.

## (2) Powers of Authorities

This ordinance mentions about establishment of authorities that in establishment of the local authorities that Yang di-Pertua Negeri<sup>583</sup> has power, by announce in the gazette, to establish the authorities such as District Councils, Town Board, Municipal Councils as he may think necessary or expedient for the purpose of the local government.<sup>584</sup> All authorities established under this ordinance are entity and capable to prosecute or to be prosecuted and have a continuity of operation, trading and holding the movable and immovable properties.<sup>585</sup> When each authority has been already established, it will have its own operated power. The most important powers are;

### (2.1) Power to Accept Gifts<sup>586</sup>

An Authority may accept, hold and administer any gift of property for any public purpose, or for the benefit of the inhabitants of the area or any part thereof, and may execute any works, including works of maintenance and improvement, incidental or consequential on the exercise of the powers conferred by this section.

### (2.2) Power to Contract<sup>587</sup>

An Authority may enter into any contract necessary or desirable for the discharge of any of its functions under this or any other Ordinance: Provided that an Authority shall not without the prior approval of the Minister or the Cabinet, as the case may be enter into any contract of a value exceeding such amount as may be directed in respect of such Authority by the Cabinet.

Any contract made by an Authority shall be made in accordance with the standing orders of such Authority, or, in the case of the absence of these, in accordance with directions of the Minister and in the case of contracts for the supply of goods and materials or for the execution of works to the value of two thousand ringgit and upwards, such standing orders or directions shall— (a) require that notice of the intention of the Authority to enter into the contract shall be published and tenders invited; and (b) regulate the manner in which such notice shall be published and such tenders given:

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<sup>583</sup> The highest rank appointed by Yang di-Pertua Agong– the monarch and head of state of Malaysia (equal to the king in monarchy),

<sup>584</sup> The Local Government Ordinance 1961, Article 3

<sup>585</sup> The Local Government Ordinance 1961, Article 7

<sup>586</sup> The Local Government Ordinance 1961, Article 36

<sup>587</sup> The Local Government Ordinance 1961, Article 37

Provided that an Authority may, with the consent of the Minister, lawfully enter into a contract without publishing notice of the intention to enter into the same.

### (2.3) Power to Make by-Laws

Every Authority may, subject to the approval of the Minister, make by-laws for the carrying into effect and for the purposes of any function conferred on it by virtue of this or any other written law. Furthermore, this ordinance let the ruler choose to enforce this provision to all areas or to some areas of Sabah.<sup>588</sup>

### (2.4) Power of Minister to Make by-Laws

Notwithstanding any provision in this Ordinance contained, the Minister may make by-laws in respect of any matter enumerated in section 49 for the purpose of promoting uniformity of by-laws of two and more Authorities and such by-laws shall have the same force and effect as if the same were duly made by the Authorities concerned.<sup>589</sup>

### (2.5) Power of Arrest<sup>590</sup>

The provision about power of arrest of this ordinance in article 104A is similar to one of the Local Government Act 1976. Its main idea is that any officer of the Authority authorized by the Authority or any police officer may arrest without warrant any person who commits in his presence or whom he reasonably believes to have committed any offence under this Ordinance or any by-law, rule or regulation as follows:

(a) if the name or address of the person is unknown to him and the person declines to give his name and address; or

(b) if there is reason to doubt the accuracy of his name or address.

Any person arrested under this section shall be detained and shall be brought before a Magistrate's Court within twenty-four hours unless his name and address are sooner ascertained.

### (2.6) Providing Public Service

The local authority has an important duty to provide public service to people by maintain, manage and control all public areas.<sup>591</sup> For example, to construct infrastructure, road, bridge and tunnel, to enlarge or renovate public place include provision of health service, quality of life and well-being of people.

The authorities have responsible only for provide public service according to written law such as;<sup>592</sup>

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<sup>588</sup> The Local Government Ordinance 1961, Article 50

<sup>589</sup> The Local Government Ordinance 1961, Article 50(A)

<sup>590</sup> The Local Government Ordinance 1961, Article 104

<sup>591</sup> The Local Government Ordinance 1961, Article 38

<sup>592</sup> The Local Government Ordinance 1961, Article 49

- (a) regulate, supervise, inspect, prohibit, remove or license the display of advertisements or advertising devices in public place;
- (b) provide services for the improvement of agriculture and land;
- (c) provide service for livestock – regulate, restrict or prohibit the livestock movement in or through any area;
- (d) regulate and control all building and building operation and the repair and removal of ruinous and dangerous building and subject to any written law relating to town planning;
- (e) provide educational management – build school, school supply , academic management;
- (f) provide basic infrastructure and facilities for people.

(3) Validity of Acts of the Local Authority and Officers<sup>593</sup>

The provision about validity of acts of the local authority and officers of this ordinance is similar to article 28 of the Local Authorities Ordinance 1996 of Sarawak and one of the Local Government Act 1976. It prescribe that all acts or proceedings of an Authority or of any person acting as Chairman, Vice-Chairman, or other member or officer of an Authority shall, notwithstanding that it be discovered that there was some defect in the election or appointment of any such person or that he was disqualified, be as valid and effectual as if every such person as aforesaid had been duly elected or appointed and qualified.

(4) Obstructing Officers or Servants of Authority in Execution of their Duties<sup>594</sup>

The provision about obstructing officers or servants of authority in execution of their duties of this ordinance is similar to one of the Local Government Act 1976. It prescribe that any person who obstructs any officer or servant of an Authority or any public officer authorized by the Minister in the execution of any provision of any written law in respect of which powers or duties are vested in the Authority shall be guilty of an offence and shall on conviction be liable to a fine of five thousand ringgit and to imprisonment for a term of three years or to both, and the Court before which the offender is tried may order him to pay to the Authority, such sum by way of damages occasioned by the obstruction as to the Court shall seem just.

(5) Liability for Acts and Omissions

This ordinance doesn't prescribe any liability for acts or omissions in one place like one of the Local Government Act 1976, however, its prescriptions are separated by the authorities' responsibility.

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<sup>593</sup> The Local Government Ordinance 1961, Article 24

<sup>594</sup> The Local Government Ordinance 1961, Article 104

#### (6) Exemption for Officer's Liability

An Authority shall not be subject to any action, claim, liabilities or demand whatsoever arising out of any building or any works carried out in accordance with the provisions of this Ordinance or under any by-laws made thereunder, or by reason of the fact that such buildings, works or the plans thereof are subject to the inspection and approval of the Authority and nothing in this Ordinance or any by-laws made thereunder shall make it obligatory for the Authority to inspect any building, works or materials or the site of any proposed building to ascertain that the provisions of this Ordinance or any by-laws are complied with or that plans, certificates and notices submitted to the Authority are correct.<sup>595</sup>

#### (7) Applicant of the Public Authority Protection Act 1948

This ordinance doesn't take the Public Authority Protection Act 1948 come into force. This is differ from the Local Government Act 1976 that has the provision to take the Public Authority Protection Act 1948 come into force.

#### B.2 Sarawak State

The law enforce in this state is the Local Authorities Ordinance 1996 which only apply to Sarawak. This ordinance has effected since 1966 after publication in the gazette then it has several amendments. This ordinance mention about the establishment of local government authorities, the composition of authorities, the meetings and proceedings of authorities meetings, the qualification of appointed members, the power of local government authorities, the provision of public service, the maintenance in law and order, the power of the local government authorities and the provision about the local government authorities' income.

#### (1) Appointment and Qualification of Officers

The provision about an appointment and qualification of local officer which is seen clearly in this ordinance is an appointment of the Councilors of the local authority.<sup>596</sup> Person who become the Councilors of the local authority must be appointed from amongst Malaysian citizens who are ordinarily resident in Sarawak and who in the opinion of the Yang di-Petua Negeri have wide experience in local government affairs or who have achieved distinction in any profession, commerce or industry, or are otherwise capable of representing the interests of their communities in the local authority area.

#### (2) Powers of Local Authority<sup>597</sup>

Generally, officer has power as prescribe in written law and specifically prescribe in this law. It could consider the power of the local authority as follows;

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<sup>595</sup> The Local Government Ordinance 1961, Article 106A

<sup>596</sup> The Local Government Ordinance 1961, Article 13

<sup>597</sup> The Local Authorities Ordinance 1996, Article 5

### (2.1) Power to Make by Laws<sup>598</sup>

In addition to the powers of making bylaws expressly or impliedly conferred upon it by any other provisions of this ordinance, and subject to sections 92 and 93, every local authority may from time to time make, amend and revoke by laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety, quality of life and wellbeing of the inhabitants or for the good order and government of the local authority area and in particular in respect of all or any of the following purposes;

- (a) to regulate the repairing, cleaning, watering and lighting of streets, roads, canals and bridges;
- (b) regulate, license, restrict, prohibit or remove the exhibition of advertisements;
- (c) to regulate the planting, preservation and removal of trees, flowers and shrubs in public places;
- (d) to provide for the protection from damage or interference of any local authority works or property situated or being in, under or over any public or private place within the local authority area;
- (e) to provide for the establishment, regulation and management of any public park, walk, recreation and pleasure ground, garden, swimming pool, lake, stadium, library, art gallery, museum, theater, restaurant, hall, assembly room, or aquarium under the control of the local authority by virtue of this Ordinance and any other written laws;
- (f) to regulate within the local authority area the landing and temporary storage of goods upon public quays, wharves and streets, adjacent to any port, or any waterway connected therewith, and to fix the fees to be charged in respect of such temporary storage;
- (g) to regulate any public sales held in any public place and manage public place appropriately;
- (h) to regulate the provision and standard of public transport services;

All the laws issued under this ordinance must be approved by Yang di-Pertua Negeri then publicized in the gazette to become enforceable. Besides, Yang di-Pertua Negeri has power to amend or abolish bylaw or law relates to local authority.<sup>599</sup>

### (2.2) Powers of arrest<sup>600</sup>

The provision about power of arrest of this ordinance is similar to one of the Local Government Act 1976 and one of the Local Government Ordinance 1961 but adds

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<sup>598</sup> The Local Authorities Ordinance 1996, Article 91

<sup>599</sup> The Local Authorities Ordinance 1996, Article 92

<sup>600</sup> The Local Authorities Ordinance 1996, Article 152

the type of authorities who can arrest without warrant to person or officer who is in uniform or wearing a visible badge of office and authorized in writing by local authority.

### (2.3) Providing Public Service

This ordinance determine duty of local authority to provide public service by maintain, manage, and control all public areas. For example, to construct infrastructure, road, bridge and tunnel, to enlarge or renovate public place include provision of health service, quality of life and well-being of people. The local authorities have duty to provide public service only specify in written law such as;

(a) the local authorities have power to control, protect and preserve public place and the greens under the Public Park and Greens Ordinance 1993;

(b) action on environmental management and the allocation and utilization of space in the local area;

(c) action on supervise the building to be built appropriately and safely, and have power to give order to fix or remove any inappropriate building;

(d) to temporary close any public place;

(e) action to provide for the cleaning and hygiene market; action on sewerage;

(f) Action on maintain order in a public place and to prevent the nuisance to the publics.

### (2.4) Validity of Acts of the Local Authority and Officers

The provision about the validity of acts of the local authority and officer of this ordinance is similar to one of the Local Government Act 1976. It prescribes that all act of a local authority or of any person acting as Chairman, Councilor, Secretary or any other official, as the case maybe, shall, notwithstanding that it be discovered that there was some defect in the appointment of any such person or that he was disqualified, as the case may be, be as valid and effectual as if such person had been duly appointed and qualified.<sup>601</sup>

### (2.5) Obstruction of Officers<sup>602</sup>

The provision about the obstruction of officers of this ordinance is similar to one of the Local Government Act 1976 that is anyone who obstructs the officer who authorized by Minister or obstructs any person who is appointed by this ordinance as local officer from duty will be guilt of an offence and will be liable on conviction on a fine not exceeding 1,500 ringgit or to a term of imprisonment not exceeding 6 months or to both such fine and imprisonment. In this case, it can be seen clearly about the different of the

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<sup>601</sup> The Local Authorities Ordinance 1996, Article 28

<sup>602</sup> The Local Authorities Ordinance 1996, Article 162

penalty of this ordinance that is lighter than the one of the Local Government Act 1976 which has penalty in term of a fine 5,000 ringgit and imprisonment for 3 years.

#### (2.6) Liability for Acts and Omissions

The provision about the liability of acts and omissions of this ordinance is similar to one of the Local Government Act 1976 that is “for the purposes of any prosecution for an offence under this ordinance or under any bylaw or regulation - whenever any agent or employee in the course of his employment does or omits to do an act the doing or omission to do which by his principal or employer would be an offence, such agent or employee shall be guilty of that offence, and his principal or employer and any person who at the time of the act or omission was in charge of the business in respect of which the act or omission occurred shall also be guilty of that offence unless such principal or employer or other person, as the case may be, proves to the satisfaction of the Court that having regard to all the circumstances he took all reasonable means and precautions to prevent such act or omission”.<sup>603</sup>

#### (2.7) Exemption for Officer’s Liability

The provision about the exemption for officer’s liability of this ordinance is similar to one of the Local Government Ordinance 1961 of Sabah and one of the Local Government Act 1976. It could be concluded that no matter or thing done or omitted, and no contract entered into, in good faith and for the purposes of this ordinance, or of any bylaw or regulation in force within the local authority area, by any Councilor, officer or servant of the local authority or other person, acting under the direction of the local authority, shall subject any such person personally to any action, liability, claim or demand whatsoever; and any expense incurred by any such person as aforesaid shall be paid by the local authority out of its revenues.<sup>604</sup>

#### (2.8) Applicant of the Public Authority Protection Act 1948

The Public Authority Protection Act 1948 will be applied to any local officer who operates in Sarawak's administrative district in the event of any action or claim related to the authorities, officer or agent of the authority in any action, omission or wrongdoing.<sup>605</sup>

### **3. The Government Information Law**

An important law that the announcement of the government information has involved is The Official Secrets Act 1972 which tend to classify the government document type to be announced to the public. This act ensure person to access to the government information. In the past, most of the government information had been classify as

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<sup>603</sup> The Local Authorities Ordinance 1996, Article 155

<sup>604</sup> The Local Authorities Ordinance 1996, Article 159

<sup>605</sup> The Local Authorities Ordinance 1996, Article 163



confidential but after this act has been enacted, people can access to more useful information, the government information.

The Official Secrets Act 1972, based on England's statute, is Malaysia's law which has an objective to prohibit the information announcement. It classifies the information whether confidential information or not. After an enactment of this act, it has remarks and criticisms that there is not clear about the act's contents so it had an amendment in 1986 which use in nowadays.

#### A. The Government Document Classification

This act has classified the government document type which is confidential into 3 types, (1) the documentation of the Cabinet, the decision and the consideration of the Cabinet including documents of the Standing Committee of the Cabinet, (2) the documents of the Executive Council of the State, the decisions and deliberations of the Executive Council of State including documents of The Standing Committee of the Executive Council of State, and (3) the documents related to state security, state defense and international relations.

Moreover the definition of "Document" includes, in addition to a document in writing and part of a document as follows:<sup>606</sup> (a) any map, plan, model, graph or drawing; (b) any photograph; (c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom.

#### B. The Offences under the Official Secrets Act 1972

This act imposes the following action as an offense;

B.1 Action or doing on the document in different ways in prohibited or controlled places such as the places that involve with authority which often about the stability and security of the majority.<sup>607</sup>

B.2 Makes or assists in making a declaration or statement false in any material respect for the purpose of obtaining permission. This part determines the penalty for offender.<sup>608</sup>

B.3 Act of spying which is the action of any person tend to get information that may effect to the safety or interest of Malaysia.<sup>609</sup>

B.4 Prohibition from carrying photographic apparatus. Any person within any prohibited place carries or has in his possession or under his control any photographic

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<sup>606</sup> The Official Secrets Act 1972, Article 2

<sup>607</sup> The Official Secrets Act 1972, Article 4

<sup>608</sup> The Official Secrets Act 1972, Article 5

<sup>609</sup> The Official Secrets Act 1972, Article 6

apparatus otherwise than with lawful authority or for a lawful purpose he shall be guilty of an offence punishable with a fine not exceeding two thousand ringgit or imprisonment for a term not exceeding one year or with both.<sup>610</sup>

#### B.5 Wrongful communication, *etc.*, of official secret

(1) In case of any person having in his possession or control any official secret or any secret official code word, countersign or password

(2) In case of relates to or is used in a prohibited place or relates to anything in such a place.

(3) In case of relates to munitions of war and to other apparatus, equipment and machinery which are used in the maintenance of the safety and security of Malaysia.

(4) In case of it has been made or obtained in contravention of this Act.<sup>611</sup>

(5) In case of the unauthorized person taking or making

1) If any person gains or assists any other person to gain admission to a prohibited place otherwise than by an authorized point of entry or for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of Malaysia—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be likely to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;

(b) makes use of any disguise or false name, or knowingly conceals his identity or nationality;

(c) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission;

(d) forges, alters, tampers with, disposes of or destroys any passport or any naval, military, air force, police or official pass, permit, certificate, license or other document of a similar character, or uses or has in his possession any such forged, altered, or irregular official document;

(e) personates, or falsely represents himself to be, a person holding office or in the employment of a person holding office in the public service, or personates, or falsely represents himself to be or not to be, a person to whom an official document or secret official code word, countersign or password has been duly issued or communicated; or

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<sup>610</sup> The Official Secrets Act 1972, Article 7

<sup>611</sup> The Official Secrets Act 1972, Article 8

(f) uses, or has in his possession or under his control, without the authority of the public service concerned, any key, badge, device, die, seal, stamp or official paper of or belonging to, or used, made or provided by any public service or by any diplomatic, naval, military or air force authority appointed by or acting under the authority of the Government, or any key, badge, device, die, seal or stamp so nearly resembling any such articles as aforesaid as to be likely to deceive, or counterfeits any such articles as aforesaid, or uses, or has in his possession, or under his control, any such counterfeited articles, he shall be guilty of an offence punishable with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding seven years or with both.

2) If any person for any purpose prejudicial to the safety of Malaysia—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any public service or any person authorized by such public service with regard to the return or disposal thereof;

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word, countersign or password so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word, countersign or password issued for the use of some person other than himself;

(c) on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to the Chief Police Officer;

(d) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such key, badge, device, die, seal or stamp; or

(e) with intent to obtain an official document, secret official code word, countersign or password, whether for himself or for any other person, knowingly makes any false statement, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.<sup>612</sup>

(6) In case of interfering with police officers or members of the armed forces, If any person who is within or in the vicinity of any prohibited place, obstructs, misleads or otherwise interferes or impedes any police officer or any member of the armed forces engaged on duty in relation to the prohibited place, he shall be guilty of an offence punishable with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding seven years or with both.<sup>613</sup>

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<sup>612</sup> The Official Secrets Act 1972, Article 9

<sup>613</sup> The Official Secrets Act 1972, Article 10

### C. Burden of Proof and Presumptions

The provision in this section is the presumption to people whose behavior or objective has a negative to safety or interest of Malaysia. It doesn't require the clearly proof whether it has action or objective to do so or not. Anyone who has behavior involving with documents or data or using of documents or data in restrict place, receive or occupy a secret information or password to access the secret information with or without passing information to other person which under this act is prohibited and whether this person has the authorize to access the information or not, It must be presume that this person create an offence until proven innocent. The following procedure is to prove guilty, firstly, declare private information such as name, surname, and resident and of course co-offender's information as well (if any).

### 3.9.3 Governmental Authority

According to the Constitution of the Federation of Malaysia, it prescribes the administration of the local government to be administered under the supervision of the government of the state. The governance and administration of government have the Ministry of Urban Wellbeing Housing and Local Government to coordinate, contact and work together with the local government under the applicable law and policy at the same standard. Besides, the ministry is the authority to coordinate the budgets from the state government as well.

#### - The Ministry of Urban Wellbeing, Housing and Local Government

During the initial period of the founding of the ministry, it was named the Ministry of Local Government and Housing. Later in year 1971 to 1978, the ministry was split into 2 ministries, the housing authority under the provision of the Ministry of Housing and Settlement and the authority over the local government under the provision of the Ministry of Local Government and Federal Territories. In 1978, these 2 ministries had combined together again then named the Ministry of Housing and Local Government. Finally, in 2013, the period after the general election, It had changed the ministry's structure then, again, named the Ministry of Urban Wellbeing, Housing and Local Government which primary authority and responsibility is to plan schedule and set the activities to improve the quality of life

#### A. Administrative Structure

The Ministry of Urban Wellbeing, Housing and Local Government, is the central government-class ministry, govern together with state government and local government under the authority derived from Constitution of the Federation of Malaysia. The ministry has structural order thus the Minister responsible for direct and manage through the line of command, the Deputy Minister, which has only 1 position, responsible for coordinate with

the Minister. For public agent, the highest rank is the Permanent Secretary then several Deputy Permanent Secretaries to control and run the ministry such as Deputy Minister responsible for policy and development, Deputy Minister responsible for social welfare and Deputy Minister responsible for management.<sup>614</sup>

#### B. Competent Authority

The Primary authority and function and responsibility of the Ministry of Urban Wellbeing, Housing and Local Government is to create and improve the quality of life to a better environment according to the guideline of the National Development Plan. It also responsible for develop the country as the plan set out include provide quality public services to improve the quality of life. This could be considered in detail below.

- 1) Provide budget for housing, personal housing supervision, community management and resolve housing problems.
- 2) Encourage the local authority to provide a good quality public services which support social and economic to meet the community need.
- 3) Provide a fire protection and an effective emergency aids to protect life and property.
- 4) Provide Policies and technical suggestions to the federal government, state government and local government about planning, management, development and reservation of reserved area in National Physical Plan.
- 5) Provide Policies and technical suggestions to the federal government, state government and local government about using of public area, public park and recreation facilities.
- 6) Provide policies about development, management and expense of waste and cleanliness of public place.
- 7) Provide activities to serve and to support the urban lifestyle and the participation with local authorities.
- 8) Provide development and oversight of the loan and the loan source.
- 9) Provide policies and activities to resolve poverty problem and to develop quality of life.

The decentralization and line of command within the Ministry of Urban Wellbeing, Housing and Local Government has detail as follow. Deputy Minister of Urban Wellbeing, Housing and Local Government is the commander and has authority to supervise the operation of the Permanent Secretary while the Permanent Secretary has authority to supervise overall work of the ministry and is the commander of all public agents. The Permanent Secretary has authority to command some offices or sections directly such as

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<sup>614</sup> The Ministry of Urban Wellbeing, Housing and Local Government, <http://www.kpkt.gov.my/CARTA/carta.html#>, 1 January 2016.

legal section, corporate communication section, internal audit section, assess organizational performance section and integrity unit. Inferior to the Permanent Secretary, there are 3 Deputy Permanent Secretaries responsible for 3 different part which are (1) Deputy Permanent Secretary responsible for policy and development which has 3 subsection, development and operation section, policy and monitoring section and secretariat and international relations section (2) Deputy Permanent Secretary responsible for the Housing and the well-being of the people which has 3 subsection, Housing section, city housing section and credit section (3) Deputy Permanent Secretary responsible for management which has 5 subsection, purchasing section, information technology section, management section, human resources section and accounting section.

### **3.10 Laws on Public Order and Security Control**

#### **3.10.1 Introduction**

##### **1. Background and concept of law concerning public order and security control**

After the Second World War, it was the United Nations' policy to dissolve colonies, with the United States acting as an example by freeing the Philippines, making it the first nation to become independent from a Western country. As a result, the British Empire could not resist the global community. In 1946, the British Empire established a plan to gradually give independence to its colonies, including the MUP (Malayan Union Proposal/Plan). However, this plan caused the Malay to become resistant to the empire for the first time as the plan would reduce the status of sultans and give equal rights to all races on the Malay Peninsula as citizens of the nation. The MUP created an uproar among the Malay as they believe the plan would not only limit the privileges the Malay and the indigenous people used to have, but such privilege would also be shared with "aliens" who are the immigrants, making them equal to the Malay or the sons of the land. Such discontent led to the formation of the United Malays National Organization (UMNO) Party<sup>615</sup> to object and resist the MUP, and was expressed through boycott of the British government. As a result, the British Empire could not successfully establish a Malayan Union as planned.

The expression of power by UMNO caused the Malay to become truly nationalistic as it brought and united Malays of all classes together for the first time, to resist the form of governance. The Malays became the main political force and participated in political activities under the leadership of UMNO party who tried to strengthen its party through the concepts of race and being Malay to rally and seek support from the citizens.

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<sup>615</sup> Chalermchai Chotisut, "Bumiputera: Racial policies in Malaysia," *Parichart Journal Thaksin University*, Vol. 27 No. 1 (April-September 2014), p. 86.

After failing to establish the Malayan Union, the British Empire negotiated with UMNO representatives to consider a new regime called “Federation of Malaya,” which would return the privileges to the Malay and the indigenous people, in terms of nationality, politics, and administration. This resulted in serious resistance from non-Bumiputera, which accelerated to murder and use of weapons in 1948, led by the Malayan Communist Party (MCP).

The British Empire urgently attempted to establish independent Malay nation to limit the movement of the MCP, which was the cause of instability in the Malayan Union. In 1956, the British Empire drafted the first constitution, known as the Malaysian Constitution 1957, which has been in force until today. Nationalistic provisions have been included in articles 89 and 153 of the constitution, which give more privileges to Bumiputeras than non-Bumiputeras. Inclusion of nationalism in the constitution led to an increase in the severity of terrorism, leading to declaration of state of emergency in 1960. As a result, the independent Malaysian government had to declare the Internal Security Act (ISA) enforced in 1960, which influenced subsequent Malaysia’s security laws.

### **3.10.2 Relevant Legislations**

National security laws or laws concerning public order and security control give the ultimate power to the state when it is facing a situation that affects national security. However, national security laws usually give power to the government without inspection or balance from other government agencies or the public. As such, application of these laws usually affects or threatens the rights and freedom of the people. With the unlimited and untraceable nature of such power, various governments use these laws as tools for controlling or suppressing political competitors or those with a different view from the government. It could be said that national security laws can be effectively used to “build” and “maintain” the power of the government and the nation.

#### **1. Internal Security Act 1960 (ISA)**

The Internal Security Act 1960 was enacted on 1 August 1960 to prevent and combat the communist rebels (MCP). Under the Internal Security Act 1960, the sultan (head of the state), the cabinet, and the government officials, such as the police, had the authority to issue orders by virtue of such law. However, the Act does not prescribe the termination of the enforcement.

The enforcement of this Act is given particular attention by international community in the matter of human right violation. It is envisaged as being a tool for the government to attack the opposing party and control political expression by the public and the media, rather than to maintain public order or combat riots and acts of terrorism. The provisions of preventive detention, prevention of subversion, and suppression of organized violence against persons and property are also included. The main principle of the act contains

threats to human rights and is contradictory to the international principles in many respects. For example, the officials have the authority to arrest and detain a person without court order as well as the authority to detain such person under the period of time, as prescribe in the Act, which is considered relatively long. As stated under Section 73, a suspect under the internal security law shall not be granted bail, and may be detained for time periods not exceeding 60 days. In other words, a suspect can be detained, by Commissioned officer or higher grade, for a period of time which is not longer than 24 hours. However, in the event of the authority of a police officer of or above the rank of inspector, the suspect shall be detained for a period of time limited to 48 hours. While in case of the authority of a police officer of or above the rank of Assistant Superintendant, such suspect shall be detained for a period of time which is not longer than 30 days.<sup>616</sup>

After the enactment of the Act, it was enforced by the Malaysian government to detain several people who are deemed to be a threat to national security. For example, the government arrested students and scholars who criticized the performance of the government, charged them with an offence of threat against national security, and convinced the public that these people were involved in a communist movement. Mr. Anwar Ibrahim, the ex-vice president, was arrested and assaulted for having a different view from the government on how to run the country.

Enforcement of the Internal Security Act 1960 resulting in one of the largest arrest of persons suspected as threats to security was in October 1987, when the network of Chinese language teachers across the country held a protest to demand that the Malaysian government review the measures allowing for acceptance of principals and Chinese language teachers with no knowledge of Mandarin to private Chinese language schools. Politicians of the opposing party and Chinese-born media also participated in this protest. However, the Malay who supported the government also came out to oppose the Chinese protestors and demanded that the government quickly resolve the situation. This resulted in another clash of the races in Malaysia. Eventually, the government gave the “Operation Lalang” order arresting 106 government opponents on 27 October 1987 and justified that “...the government could not allow the situation to develop any further...” and charged the persons for “...involvement in activities that induce division among races in the country or that encourage racism the Chinese community...” Operation Lalang led to arrest and detention of several famous persons, including Lim Kit Siang, the leader of the Democratic Action Party (DAP), Chandra Muzaffar, the president of ALIRAN, Karpal Singh, the deputy leader of the DAP, etc. The Malaysian government also ordered the closure of daily

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<sup>616</sup> The Commissioner of Law Revision, Law of Malaysia Act 82 Internal Security Act 1960, p. 9.



newspapers The Star and Sin Chew Jit Poh, and the magazines The Sunday Star, and Watan, which criticized the government.<sup>617</sup>

In 2011, a riot demanding the government to evoke the law was becoming more widespread and violent. The crowd control caused several injuries. The government is condemned by the international community, leading to the revocation of the Internal Security Act 1960. Two anti-terrorism acts were drafted to replace the revoked the Internal Security Act 1960.

## **2. Security Offences (Special Measures) Act 2012 (SOSMA)**

### **A. Rationale of the Security Offences (Special Measures) Act 2012**

The Security Offences (Special Measures) Act 2012 was enacted by virtue of article 149 of the Constitution of Malaysia as internal security law in 2012 to replace the Internal Security Act 1960 revoked in 2011. Even though the Security Offences (Special Measures) Act 2012 was aimed to replace the Internal Security Act 1960 to limit international criticism and response to the demand of the people for protection of rights and freedom of the people, the new law failed to guarantee that fundamental rights and freedom of the people would be protected.

### **B. Essence and Enforcement Process of the Security Offences (Special Measures) Act 2012**

The Security Offences (Special Measures) Act 2012 is aimed to be applied in conjunction with the Criminal Procedure Code of Malaysia, containing the provisions regarding special measures for arrest, search, detention, and court procedures against those accused for involvement in an act prejudicial to national security. The Security Offences (Special Measures) Act 2012 contains certain provisions that protect the rights of suspects and assures the right to a fair trial, which are absent in the Internal Security Act 1960.

Section 3 of the Security Offences (Special Measures) Act 2012 provides for the definition of "Offences against the State," similar to the definition in Chapter 6 "Offences against the State" and "Offences relating to Terrorism" of the Malaysian Criminal Code.

Security offences include an act or attempt of waging against the head of state, doing harm to the head of state, or overawing by means of criminal force the Government of Malaysia, or assaulting members of parliament or any legislative assembly or of any state executive council because of having executed his or her duty, which are similar to offences of overthrowing or attempting to overthrow the government or assaulting members of the government.

Section 130B(2) defines "Offences relating to Terrorism" to mean an act or threat of action within or beyond Malaysia with the intention of causing changes in the politics,

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<sup>617</sup> Apichet Karnchanadit, "The Political Movement of SUARAM for Anti-Internal Security Act in Malaysia (1989 – 2009)," <http://www.huso.tsu.ac.th>, 18 October 2017.

religion, or regime, and intended to intimidate the public or influence or compel any government, whether in Malaysia or elsewhere, or any international organization, to do or refrain from doing any act. Under section 130B(3), an act of terrorism includes causing death, serious bodily injury, serious damage to property, use of firearms, insurgency using any computer or communication systems, interference with police, or actions which adversely affect national security. Under sections 130C to section 130T, an act of terrorism includes use of explosives, recruiting members of terrorist groups, providing training or facilities to terrorists, giving of support, directing terrorist activities and criminal conspiracy.

Under section 4 of the Security Offences (Special Measures) Act 2012, initial police detention (arrest stage) is limited to a maximum of 28 days, and requires the order of a police officer of superintendent rank. The Security Offences (Special Measures) Act 2012 also promised to ease detention by mandating immediate notification of next-of-kin and access to a lawyer of the suspect's choice. After the detention period, the public prosecutor must decide whether to prosecute or release the suspect. However, if the police officer deems it unnecessary to detain the suspect, the officer, through the public prosecutor, may file an application requesting that the court order the person to be attached with an electronic monitoring device for a period not exceeding 28 days. Judicial oversight is absent during the first 24 hours the suspect is under police custody, and such absence may be extended to 28 days. Despite the limitation of detention period, a delay of forty-eight hours in access to lawyer may be authorized by a police officer of superintendent rank if deemed necessary, which is a serious violation of due process rights of an individual.

Even though the Security Offences (Special Measures) Act 2012 provides for the right of a suspect to appeal, the suspect may be detained for several years. As long as the appeal process is still ongoing, the suspect may still be detained or attached with an electronic monitoring device, and it could take several years before the suspect is free. Despite the difference in the legal proceedings between the Security Offences (Special Measures) Act 2012 and the Internal Security Act 1960, the result of detention without trial suffered by the public from the enforcement of the Security Offences (Special Measures) Act 2012 is similar to the Internal Security Act 1960. The Security Offences (Special Measures) Act 2012 contains several provisions that empower the police officers instead of the court, whether in the form of interception of communication, and keeping secret the identity of prosecution witnesses at trial, or preventing cross-examination, which in turn violates the defendant's right to access fair trial. As a result, the Security Offences (Special Measures) Act 2012 is criticized for being enacted to deceive human rights defenders and not to protect human rights.

### **3. Prevention of Terrorism Act 2015 (POTA) and Act on Special Measures against Terrorism in Foreign Countries 2015 (SMATA)**

Since the Security Offences (Special Measures) Act 2012 has been enforcing, the problem of the legal enforcement mechanism has arisen. As the enforcement of this law is not harsh enough to tackle with the current terrorism problem. Consequently, the Government of Malaysia had to initiate the law which more strictly enough to protect the internal security and to cope with the concerned problem. The Government of Malaysia is required to enact particular laws for defending terrorism which are the Prevention of Terrorism Act 2015 (POTA) and the Act on Special Measures against Terrorism in Foreign Countries 2015 (SMATA). The significant incident that emerged the legitimacy of the law enabling to prevent and control the situation in the country was the threat from the 200 Malaysians who supported of the Islamic State in Malaysia. They have involved with the terrorist activities in Iraq and Syria and several of them has been death causing from willing suicide bomber and other death causing from joining other terrorist activity. Such an incident continually happens and it entails Malaysia Government to enact a special measure for maneuver with the terrorist problem.

#### **A. Principal and Rational of the Prevention of Terrorism Act 2015**

Malaysia has endeavor to enact the Prevention of Terrorism Act 2015. It is intended to be a strategy to tackling the problem of international terrorism among Muslim nation including terrorism in other means. Although this law has been opposed by the human rights scholars in regard of the authority to detain suspect without Court's Order, the law is still considered to be the best mechanism for dealing with the threats from the group of combatants who have the ability to use arms and army strategies, and they have endeavor to strengthen and multiply the terrorists violation network.

Thus, the Prevention of Terrorism Act 2015 is not a mechanism of the State which applies after the incident occurs. However, the Prevention of Terrorism Act 2015 emphases on the mechanisms as a preliminary protection before the conflict incident will occur.

#### **B. The Principle and the Procedural of Applying the Prevention of Terrorism Act 2015 as to Prevent the Internal Security**

The Prevention of Terrorism Act 2015 is a specific act in detaining of suspects in terrorist cases, and it particularly aims to maintain the peace and to prevent an internal chaos in Malaysia. The act extends the powers to the authorized officers to detain terrorist suspects with higher efficiency and promptitude by not requiring the exercise of court's authority, which would bring about the delay in procedure. Thus the act empowers the authority granted to the Board called the Board of Terrorism Preventive (BOTB).

First concerned subject to be considered is in the case where State's authorities will exercise the power to detain the suspects, it shall, by this act, consider whether the criminal

act of the suspects is "Terrorism act". Even though, the definition of "terrorism" must be referenced from other laws including criminal law and the Security Offences (Special Measures) Act 2012,<sup>618</sup> as to avoid the State's officials brought this act to take advantage in political affair similar as it used to occur, section 4 (3) of the Prevention of Terrorism Act 2015 clearly defines the limitations of exercising this power that the arrested or detained by this act shall not be apply in the case of the political conflict.

#### B.1 Detention during Arrested Procedure

When the acts of suspects are in the scope of the terrorism act, the police officer shall arrest suspects without issuing an arrest warrant from the Court.<sup>619</sup> After having arrested such suspects, the Act provides the duty of the police officers to take the suspects, without any unreasonable delay, to the Magistrate within 24 hours.<sup>620</sup> In the inquiry stage, the police officer shall detain suspects for a maximum of 21 days,<sup>621</sup> in the case where necessary, it may be extended for another 38 days by applying for the Court's order,<sup>622</sup> which is empowered to extend the total period of detention for 60 days. Otherwise in cases where the police officer considers releasing the suspects, police officer may upon request public prosecutor to submit report to the Court as to apply a the electronic monitor equipment instead of detention.<sup>623</sup>

#### B.2 Inquiry and Order

The person who response in the inquiry procedure are as follows:

##### (1) Inquiry Officers

The investigation will be conducted by the inquiry officers, they shall be appointed by the Minister of Home Affairs. The inquiry officer shall not appoint from police officer.<sup>624</sup> The appointed officers have authority to gather evidence, summon the person concerned on the investigation. Suspects in this stage of investigation still have a right to have a lawyer, if the suspect's words are given to an inquiry officer.<sup>625</sup> When the inquiry officer completed investigations, he will be required to submit reports to the Preventive of Terrorism Board (POTB) for the consideration.

##### (2) Preventive of Terrorism Board (POTB)

The Preventive of Terrorism Board constitute from a number of three to six Members including Chairman and Deputy Chairman of the Board. The Board shall be

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<sup>618</sup> Section 130B of the Penal Code of Malaysia

<sup>619</sup> Section 3 of the Prevention of Terrorism Act 2015

<sup>620</sup> Section 3 (3) of the Prevention of Terrorism Act 2015

<sup>621</sup> Section 4 (1) of the Prevention of Terrorism Act 2015

<sup>622</sup> Section 4 (2) of the Prevention of Terrorism Act 2015

<sup>623</sup> Section 7 of the Prevention of Terrorism Act 2015

<sup>624</sup> Section 9 of the Prevention of Terrorism Act 2015

<sup>625</sup> Section 10 of the Prevention of Terrorism Act 2015

appointed by the Yang di-Pertuan Agong. The Member of the Board shall hold the office for three years and they can be reappointed for another three years but not exceeded six years in total. The Member of the Board can resign during the period. The resignation must be granted by the Yang di-Pertuan Agong and the Yang di-Pertuan Agong has the power to revoke the Member from the board. At least three Members shall constitute the quorum.<sup>626</sup>

The Preventive of Terrorism Board has a major duty to consider the reports received from the inquiry officer. In the case where the Board considers that the suspect is involved, supporting terrorism, or a member of transnational terrorist group the Preventive of Terrorism Board empower to order suspects detention for a period not exceeding two years.<sup>627</sup>

In addition to suspect detention order, if the Preventive of Terrorism Board consider that person must be controlled or restricted certain rights, the Board can issue restriction order or restriction person order which such person will be controlled by a police officer within the period not exceeding five years. Such powers of the Preventive of Terrorism Board are detailed as follow:

- Restricted the habitation only in the allowance State, province or village.
- Prohibited to change the residential unless they have permission from the Board.
- Prohibited from leaving the country unless they have permission from the Board.
- Reported their resident to officers in charge at all time.
- Appeared to police officer at a nearby police station from time to time during the period where the Board specified
- Remained the person in their resident or area between such hours as may be specified
- Prohibited to access in the State, province or village specified by the Board
- Restricted the use of communication equipment
- Limited the use of the Internet.
- Ordered the person to be in silent and obey the regulation
- Ordered to acquire the parole
- Ordered the person to apply the electronic monitoring device

To amendment, revise or revoke these orders are exclusive power of the Preventive of Terrorism Board, and cannot be rebutted or appeal to the Court.<sup>628</sup>

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<sup>626</sup> Section 8 of the Prevention of Terrorism Act 2015

<sup>627</sup> Section 13 of the Prevention of Terrorism Act 2015

<sup>628</sup> Section 19 of the Prevention of Terrorism Act 2015

### C. Additional provisions in prevention and Suppression of Terrorism

Malaysian Parliament has enacted a new legislation called Act on Special Measures against Terrorism in Foreign Countries 2015 in order to be applied in conjunction with the Prevention of Terrorism Act 2015. The Act on Special Measures against Terrorism in Foreign Countries 2015 consider to be a support mechanism in preventing of the suspected person both nationals and foreigners, who is possibility to attempt to be terrorists, involve with terrorists, or be a member of transnational terrorist groups, to enter or depart of the country, or using Malaysia as a connecting country.

The key principle of the Act on Special Measures against Terrorism in Foreign Countries 2015 is focus on the suspension, revocation or seized of travel documents as well as detained terrorist suspects that will enter in the country. Besides for the interest of preventing national suspects departs to join insurgents with transnational terrorist groups, or to prevent the transnational suspect of terrorism entering into the country. The essences of such a law are as follows:

C.1 The power to suspend or revocation a passport issued for Malaysian citizen who has related with terrorist group that has been recorded in the international list. The Act empowers Director General of Immigrant to suspend or revoke a passport issued by Government of Malaysia upon the request of Inspector General of Police, when a Malaysian citizen is suspected that they may travel outside the country in order to participate in or support of terrorist groups abroad. For the individuals who has been suspended or revoked passport has the right to request to the Director of the Immigration to rebut such orders.<sup>629</sup>

C.2 The power to summons the travel documents belonging to the foreigners who have related with international terrorist group.<sup>630</sup> The Act will empower the Minister of Home Affairs upon the request from an Inspector General of Police, when that person suspects are foreigners, who may travel outside the country in order to participate in or support the terrorist groups abroad. The Ministry of Home Affairs empowers to issue orders to seize travel documents of suspected foreigners for a period not exceeding 14 days. When the Minister of Home Affairs has issued such an order, police officers enable to call foreign suspects for surrender the travel documents. If the person does not comply with the police officer's order to surrender travel documents, police officers have the power of searching as to obtain the travel documents; even though, the concerned document are not in the possession of the suspected foreigners.

In regard to the violation of the General Director of Immigrant's order or the violation of the Ministry of Home Affairs' order as aforementioned, there has criminal

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<sup>629</sup> Section 5 of the Act on Special Measures against Terrorism in Foreign Countries 2015

<sup>630</sup> Section 6 of the Act on Special Measures against Terrorism in Foreign Countries 2015

punishment of two years imprisonment.<sup>631</sup>

### 3.10.3 Governmental Authority: Royal Malaysia Police under the Governance of Ministry of Home Affairs

Regarding that the Ministry of Home Affairs has the various authorities such as the authority concerned on immigration, foreign labors, narcotics prevention and suppression, corrections, etc. One of the key duties of the Ministry of Home Affairs is the authority concerned on internal security of the country and the Government Agency response directly for internal security is the Royal Malaysia Police.

#### A. Administrative Structure

The Royal Malaysia Police Office has the Inspector General as the highest Commander of the Office. The Inspector General has duty to report the all responsibilities to the Minister of Home Affairs and he shall be supervised by Royal Malaysia Police Force Commission which has the Ministry of Home Affairs as President of the Commission. Structure of the Office of the Royal Malaysia Police is centralized authority only at the Federal level,<sup>632</sup> with only six units related to the prevention and suppression of crimes and they are supervised by the police officer at commander level, which are:

- Criminal Investigation Division
- Narcotics Criminal Investigation Division
- Internal Security and Public Order Department (KDN/KA)
- Special Branch (SB)<sup>633</sup>
- Commercial Crime Investigation Department
- Counter-Terrorism Special Operations Team

#### B. Competent Authority

Duties and Authorities of the Royal Malaysia Police Office in general are provided in section 20 (3) of Police Act 1967; the major responsibilities are such as:

- Conducting investigations
- Processing the information concern on security of the State
- Conducting prosecutions
- Executing summonses, subpoenas, warrants, commitments and other process

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<sup>631</sup> Section 6(3) and Section 7(6) of the Act on Special Measures against Terrorism in Foreign Countries 2015

<sup>632</sup> Kent Roache, **Comparative Counter-Terrorism Law**, United Kingdom: Cambridge University Press, 2015, p. 26.

<sup>633</sup> The Special Branch (SB) is empowered to acquire intelligence on internal and external threats to the nation, subversive activities, extremist activities and activities of sabotage and spying. Wikipedia, [https://en.wikipedia.org/wiki/Malaysian\\_Special\\_Branch](https://en.wikipedia.org/wiki/Malaysian_Special_Branch), 12 October 2017.

- lawfully issued by any competent authority
- Exhibiting information
- giving assistance in the protection of life and property;
- protecting public property from loss or injury
- Escorting and guarding prisoners and other persons in the custody of the police

### 3.11 Laws on Anti-Corruption

#### 3.11.1 Introduction

Throughout a dominance of UMNO party under the ex-prime minister Mahathir Mohamad before becoming replaced by Najib Razak, Malaysia has experienced the greater country's development. Besides government strength, the seriously combatting corruption, especially among some corrupted government officers, is a main reason contributing to rapid growth<sup>634</sup>. Key success factors of managing corruption in Malaysia are to emphasize to any preventive measure and raise anti-corruption awareness to people. Real commitment to solve corruption problem is reflected by the Mahatir Mohamad's policy named "Vision 2020" which was provided in 1991. It was amended in 1998 since Malaysian government found that the real problem and weakness of country development are corruption, abuse of power, Inefficiency of public administration, which directly involve to human development. Because of those reasons, the government adjusts the "Vision 2020" by emphasizing on the integrity of the management. In order to achieve it, the Malaysian government has identified a set of six core values which people should internalize and put into practice namely; honesty, trustworthiness, wisdom, fairness, transparency and gratitude.

One of factors that reflect on a better change of corruption is Corruption Perceptions Index (CPI) which ranks by Transparency International. In 2014, Malaysia was ranked 50<sup>th</sup> out of 175 countries and 2<sup>nd</sup> out of ASEAN countries, while the first is Singapore. Although there are good prospects in dealing with corruption, Malaysia has still faced with it now because of the general attitude of the majority of Malaysians towards patronage and corruption. Transparency International warned that Malaysia is facing a major corruption crisis<sup>635</sup>. It called

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<sup>634</sup> Punchada Sirivunnabood, "Let's have a look at corruption problems in ASEAN !, Those are insolvable." <[http://www.matichon.co.th/news\\_detail.php?newsid=1367564285&grpid=03&catid=12&subcatid=1200](http://www.matichon.co.th/news_detail.php?newsid=1367564285&grpid=03&catid=12&subcatid=1200)>, (accessed December 10, 2015).

<sup>635</sup> In August 2015, there were demonstrations against Prime Minister Najib Razak. It was led by the coalition for clean and fair elections (Bersih) with ten thousands of people protested in Kuala Lumpur, city of Kota Kinabalu in Sabah and city of Kuching in Sarawak, calling for Prime Minister Najib Razak to step down after involving with corruption because it was found that 700 million dollar or about 24,500,000,000 baht from The 1Malaysia Development Berhad (1MDB) fund, which was the fund for



on the Malaysian government to ensure independent investigation into corrupt allegations, and that prosecution and punishments are followed through, irrespective of who is implicated. Courageous words but misplaced<sup>636</sup>.

### 3.11.2 Relevant Legislations

#### (1) Anti-Corruption Law

##### a. Malaysian Anti-Corruption Commission Act 2009

The specific legislation that defines Anti-Corruption Organization's structure and its powers named Malaysian Anti-Corruption Commission Act 2009. The Act was officially enforced on 1<sup>st</sup> January 2009.

This Act deal substantially with these matters as follows;

#### 1. The Basic Concept of the Act

The principal objectives of this Act are to promote the integrity and accountability of public and private sector administration by constituting an independent and accountable anti-corruption body; and to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public and private sector administration and on the community.

#### 2. Corruption Offences

##### 2.1 Offence of accepting gratification (Section 16)

This section provides characteristic of offence of accepting gratification that it is an offence , which he by himself or in conjunction with any other person , corruptly solicits or receives or agrees to receive for himself or for any other person; or corruptly gives, promises or offers to any person whether for the benefit of that person or of another person if it is committed as

(1) a reward for any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or

(2) a reward for any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned.

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economic development established by the government, was transferred to his private account in July 2015. Please see detail in “the Malay protested “ Prime Minister Najib Razak – Exciting Independence Day” <[http://www.khaosod.co.th/view\\_newsonline.php?newsid=1440831738](http://www.khaosod.co.th/view_newsonline.php?newsid=1440831738)>, (accessed December 10, 2015).

<sup>636</sup> Greg Lopez , “Anti-corruption Reform In A Setting Of Widespread Corruption – The Case Of Malaysia”, <[http:// www.forbes.com/sites/greglopez/2015/09/02/anticorruption-reform-in-a-setting-of-widespread-corruption-the-case-of-malaysia/](http://www.forbes.com/sites/greglopez/2015/09/02/anticorruption-reform-in-a-setting-of-widespread-corruption-the-case-of-malaysia/)>, (accessed December 12 , 2015).

## 2.2 Offence of Giving or Accepting Gratification by Agent (Section 17)

This section provides characteristics of Accepting Gratification by Agent that

(a) being an agent, he corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

(b) he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

## 2.3 Offence of Intending to Deceive Principal by Agent (Section 18)

This section stipulates characteristics of offence of intending to deceive principal by agent that it is an offence which he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal<sup>637</sup> is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material particular, and is intended to mislead the principal.

## 2.4 Offence of Accepting or Giving gratification as being an agent (Section 19)

This section provides that acceptor of gratification as agent or giver of gratification are guilty notwithstanding that purpose was not carried out or matter not in relation to principal's affairs or business if

(1) Where in any gratification is given to agent, he shall be guilty if it is proved that he corruptly solicited, accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that the gratification was solicited or offered as an inducement or a reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, notwithstanding that—

(a) he did not have the power, right or opportunity so to do, show or forbear;

(b) he accepted the gratification without intending so to do, show or forbear;

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<sup>637</sup> "Principal" under this Act includes any employer, any beneficiary under a trust, any trust estate, any person beneficially interested in the estate of a deceased person, the estate of a deceased person, and, in the case of any person serving in or under the public body.

(c) he did not in fact so do, show or forbear; or

(d) the act, favour or disfavour was not in relation to his principal's affairs or business.; or

(2) Where in any gratification is given to agent , a giver of gratification shall be guilty if it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or a reward for doing or forbearing to do any act or for showing or forbearing to show any favour or disfavor to any person having reason to believe or suspect that the agent had the power, right or opportunity so to do, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business, notwithstanding that

(a) the agent had no power, right or opportunity or

(b) the act, favour or disfavour was not in relation to his principal's affairs or business.

### 2.5 Offence of Using Office or Position for Gratification (Section 23)

This section provides that any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.

Besides bribery of Malaysian public officials , this act also provides bribery of foreign public officials offence in section 22<sup>638</sup>.

Moreover, to combat corruption, section 66 of the Act stipulates that any citizen or permanent resident, commit an offence under this Act is committed in any place outside Malaysia, it shall be deemed as such offence is committed at any place within Malaysia.

### 3. Power to Investigate and enforce the law

This act shows the investigatory and enforcement powers of authority officers in many ways such as power to receive , investigate and inquire into investigation (section 29); power to examine persons (section 30); power to search and seizure (section 31); seizure of movable property (section 34); investigation of share , purchase etc. (section 35); powers to obtain information (section 36); power to intercept communication (section 43) and so on<sup>639</sup>.

Furthermore, in such investigation, may proceed by covert operation such as gathering of intelligences, recording of conversation (body and wiretap) and by overt

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<sup>638</sup> Narong Jaihar et al., Final Report : The Research Project for the Revision of the Criminal Code Book Two: Specific Offences relating to Officials and Human Trafficking presented to Office of Justice Affairs, Ministry of Justice , Faculty of Law Thammasat University, September 2015, pp.216-217.

<sup>639</sup> *Ibid.*, p. 218.

operation such as search and seizure (with or without warrant), following the money trail (access to bank accounts/share accounts/declaration of assets), examination of witness  
Arrest and detention of suspects.

One of the substantial measures in law enforcement is forfeiture of property by carrying out under the authority of the public prosecutor. It may do that whether there is prosecution for an offence or not.

- Forfeiture upon prosecution (Section 40)

In any prosecution for an offence under this Act , the court shall make an order for the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where -

(1) the offence is proved against the accused; or

(2) the offence is not proved against the accused but the court is satisfied that the accused is not the true and lawful owner of such property; and that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

In addition, where the offence is proved against the accused but the property has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or the value of the gratification received by the accused.

- Forfeiture without prosecution (Section 41)

Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Public Prosecutor may apply to a Sessions Court<sup>640</sup> Judge , within eighteen months from the date of seizure , for an order of forfeiture of that property within eighteen if he is satisfied that such property had been obtained as a result of or in connection with an offence under this Act.

However, before making an order for the forfeiture of the property, the Judge to whom an application is made shall cause to be published a notice in the Gazette calling upon any person who claims to have an interest in the property to attend before the Court on a date specified in the notice, to show cause as to why the property should not be forfeited. If it is satisfied that the property is the subject matter of or was used in the commission of an offence under this Act; and there is no purchase in good faith for valuable consideration in respect of the property , he shall make an order for the forfeiture of the property<sup>641</sup>.

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<sup>640</sup> Session Court is one of Malaysian court which is equivalent to court of first instance in Thailand, having jurisdiction to hear both civil and criminal cases.

<sup>641</sup> Narong Jaihar et al., *supra* note 5, p. 218.

#### 4. Evidence for prosecution of corruption cases

The provisions relate to evidence in this Act are the exclusion of general rule of evidence. For example, the Act provides presumption of corruption in section 50 or admissibility of statement of accused person which made before arrest or in the course of investigation in section 53 and so on.

#### 5. Protection of Witness and Public Officials

- Witnesses who disclose information or documents during an investigation shall not be liable to any prosecution under or by virtue of any written law, or to any proceeding or claim by any person under or by virtue of any contract, agreement or arrangement or otherwise except for an offence of giving false statement (section 48)

- Where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority. (section 65)

- Any officer or employee of the Government of Malaysia who act or make statement in good faith shall not be brought, instituted, or maintained in any court or before any other authority. (section 72)

#### **b. Penal code**

The Penal code represents the core of the law in Malaysia that determines criminal offences and its punishment including corruption offences such as public servant taking a gratification in an official capacity or public servants obtaining valuable items from clients who have official dealings.

##### 1. Offence of Public Servant Taking a gratification (Section 161)

This section provides elements of the offence of public servant taking a gratification that

(1) Whoever, being or expecting to be a public servant

(2) accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration

(3) as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person, or for rendering or attempting to render any service or disservice to any person,

with the Government, or with any member of the Cabinet or of Parliament or of a State Executive Council or Legislative Assembly, or with any public servant,

Person who commits the offence prescribed in this section shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Taking these acts which violate the offense in this section for examples

- A , a Judge, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

- A, a public servant, induces Z erroneously to believe that A's influence with the Chairman of a Town Board has obtained for Z a contract to do work, and thus induces Z to give A money. A has committed the offence defined in this section<sup>642</sup>.

2. Offence of Public servant obtaining any valuable thing with inadequate manner (Section 165)

This section stipulates the elements of Offence of Public servant obtaining any valuable thing with inadequate manner that

(1) Whoever, being a public servant

(2) accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or

(3) having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned,

Person who commits the offence prescribed in this section shall be punished with imprisonment for a term which may extend to two years or with fine or with both

The objective of this section is to advise any public servants avoiding any issue of vested/self/conflict of interest in performing the official transaction<sup>643</sup>.

Taking this act which violates the offense in this section for example,

- A, a Judge, hires a house of Z, who has a case pending before him. It is agreed that A shall pay fifty ringgit a month, the house being such that, if the bargain were made in good faith, A would be required to pay 200 ringgit a month. A has obtained a valuable thing from Z without adequate consideration.

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<sup>642</sup> They are the examples referred in the Penal Code.

<sup>643</sup> Mohamad Tarmize bin Abdul Manaf and Jayantha Kumar Sen Gupta , On the Road to A Corruption-Free Nation : Anti-corruption initiatives in Malaysia , 3<sup>rd</sup> ed.( Malaysia Anti-Corruption Commission , 2014) , p. 19.

### c. Anti-Money Laundering and Terrorism Financing and Proceeds of Unlawful Activities Act 2001

Besides MACC Act, there is another act that deal directly with anti-corruption named Anti-Money Laundering and Terrorism Financing and Proceeds of Unlawful Activities Act 2001. It aims to criminalize money laundering from committing any predicate offences such as acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence; removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence etc. MACC offence is the one of predicate offenses prescribed in this Act<sup>644</sup>. It may contribute to prevent any corrupted person bringing money or other properties received from committing crime to alienate those in order to avoid to be arrested. Moreover, the Act also provides some measures to any offender's property in order to prevent or overturn committing offenses such as

- To provide a reporting institution<sup>645</sup> shall promptly report to the Central Bank of Malaysia (section 14) as follows:

- (1) any transaction exceeding such amount as the Central Bank may specify;

- (2) any transaction where the identity of the person involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity or instrumentalities of an offence;

- (3) any transaction or property where any officer or employee of the reporting institution has reason to suspect that the transaction or property involved is related or linked to, is used or is intended to be used for or by, any terrorist act, terrorist, terrorist group, terrorist entity or person who finances terrorism.

- To provide inspection identification of account holder (section 16)

Section 16 of the Act prescribes that a reporting institution shall not open any anonymous account or any account which is in a fictitious, false or incorrect name; and shall not establish or conduct any business relationship, transaction or activity involving a fictitious, false or incorrect name. In addition, this section stipulates that such institution

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<sup>644</sup> The predicate offences prescribed in this Act are provided in The Second Schedule.

<sup>645</sup> "reporting institution" means any juristic person, including branches and subsidiaries outside Malaysia of that person, who carries on 24 activities listed in the First Schedule such as commercial bank, finance company and moneylender as provided in the Financial Services Act 2013 ; Islam banking business as provided in the Islam Financial Services Act 2013 or pawnshops as provided in the Pawnbrokers Act 1972.

shall ascertain the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, whether he is an occasional or usual customer.

- To provide a measure to freezing of property (section 44)

An enforcement agency<sup>646</sup> may issue an order to freeze any property of any person, as the case may be, wherever the property may be, and whether the property is in his possession, under his control or due from any source to him, if an investigation with regard to an unlawful activity has commenced against that person and the enforcement agency has reasonable grounds to suspect that the property is the proceeds of an unlawful activity or the instrumentalities of an offence.

- To provide a measure to forfeiture of property of predicate offender (section 55-56)

1) Forfeiture of property upon prosecution for an offence (section 55)

This section prescribes that the court shall make an order for the forfeiture of any property which is proved to be the subject-matter or evidence relating to the commission of predicate offence or the proceeds of an unlawful activity; or the instrumentalities of an offence, where the offence is proved against the accused; or the offence is not proved against the accused but the court is satisfied that the accused is not the true and lawful owner of such property; and no other person is entitled to the property as a purchaser in good faith for valuable consideration. In determining whether the property is the subject-matter or evidence relating to the commission of a prescribed predicate offence which may be forfeited, the court shall apply the standard of proof required in civil proceedings.

2) Forfeiture of property where there is no prosecution (section 56)

This section provides that where in respect of any property seized under this Act there is no prosecution or conviction for an offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is the subject-matter or evidence relating to the commission of such offence; or the proceeds of an unlawful activity; or the instrumentalities of an offence. The judge to whom an application shall make an order for the forfeiture of the property if he is satisfied that the property is the subject-matter or evidence relating to the commission of a prescribed predicate offence; or the proceeds of an unlawful activity; or the instrumentalities of an offence; and that there is no purchaser in good faith for valuable consideration in respect of the property. In

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<sup>646</sup> Section 3 of this Act defines “enforcement agency” that it includes a body or agency that is for the time being responsible in Malaysia for the enforcement of laws relating to the prevention, detection and investigation of any serious offence.



determining whether the property is the subject-matter or evidence relating to the commission of a prescribed predicate offence which may be forfeited, the court shall apply the standard of proof required in civil proceedings like section 55.

## **(2) Law concerning the control of public procurement**

The other form of anti-corruption law is public procurement law. The Malaysian government has established an official system of procurement which conforms to a certain extent to international standards. The process is regulated by the Financial Procedure Act 1957 and Government Contract Act 1949<sup>647</sup>. The methods of procurement, procedures to be followed and the guiding principles are laid down in the Treasury Instructions, supplemented by Treasury Circulars. These instruments apply to procurement by all federal and state governments, local authorities within the states and statutory bodies. However, they do not apply to state-owned companies.

### **a. The Financial Procedures Act 1957**

The Financial Procedures Act 1957 outlines procedures for the collection, custody, and payment of the public monies and procedures for the purchase, custody and disposal of public property and related matters. This Act explains about 3 main accounts under State Fund and how the expenditures from the accounts are enforced<sup>648</sup> as follows

1) The consolidated Revenue Account, which is the account for all money received including grants.

2) The consolidated Loan Account in which account shall be kept of all money received by way of loan upon the public credit of the Federation or of the State.

3) The consolidated Trust Account, which account shall be kept of all money received subject to a trust and to be applied in accordance with the terms of the trust.

Moreover, this Act also consists of some limitation and restrictions regarding the power of Federal Government. There are also provisions under this act pertaining to the write-off, surcharge and auditing of annual account statement that is prepared by the Treasury<sup>649</sup>.

### **b. The Government Contract Act 1949**

This Act comprises of only 10 sections. It empowers ministers in their respective ministries to enter into contracts and delegate powers to government officers to enter into contracts on behalf of government.

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<sup>647</sup> David Seth Jones , Key failing in Malaysia public procurement system and how they can be addressed by greater transparency , Institute for Democracy and Economic Affairs , October 2013 p. 2.

<sup>648</sup> Zaherawati Zakaria , FINANCIAL ADMINISTRATION , Universiti Teknologi MARA (UiTM) , Kedah 2004, p. 81.

<sup>649</sup> *Ibid.*

### c. Treasury Instruction

Treasury Instruction is the document which outlines in detail financial and accounting procedures and regulations that have to be followed in managing and using public funds including procurement.

There are some details of public procurement illustrated in this document<sup>650</sup> as follows

#### 1) Categories of Government Procurement

For purposes of procurement, the Malaysian Government procurement has been categorized as follows:

- Works: Works contracts include construction and engineering activities involving infrastructure and structures such as buildings, airports, roads/highways, dams, drainage etc. It is also inclusive of mechanical and electrical aspects of works.

- Supplies: Supplies include the supply of raw, intermediate or finished goods and products for any activity of users. Also included are construction materials, food products, uniforms, vehicles, equipment, spare parts, furniture etc.

- Services: Services include engagement of manpower, expertise and consultants in the areas of feasibility studies, research, designing, surveying, management etc. Other services such as repairs, maintenance and cleaning services.

#### 2) Types and Modes of Procurement

##### - Direct purchase

For direct purchases, procurement officers in each department or agency are allowed to procure directly needed items from any contractor or supplier if

- a. Procurement of supplies and services below the value of RM 20,000/year or
- b. Procurement of works below the value of RM 50,000/year

##### - Quotation

- a. Procurement of supplies and services above the value of RM 20,000 and up to RM 200,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All suppliers wishing to take part in quotations must be registered with the Government.

- b. Procurement of works above the value of RM 50,000 and up to RM 200,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All contractors wishing to take part in quotations must be registered with the Contractors Services Centre and Construction Industry Development Board.

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<sup>650</sup> Ministry of Finance Malaysia , Malaysia's Government Procurement Regime , November 2010  
p. 4.

- Tender

Procurement of works, supplies and services above the value of RM 200,000 must be done through tender processes. All contractors intending to participate in local tenders must be registered with the Government. International tenders will be invited for supplies and services if there are no locally produced supplies or services available. For specific works, if local contractors do not have the expertise and capability, tenders may be called on a joint venture basis between local and foreign contractors to encourage the transfer of technology. International tenders for works may only be called when local contractors do not have the expertise and capability, and a joint venture is not possible<sup>651</sup>.

However, The Financial Procedures Act 1957, The Government Contract Act 1949 and Treasury Instruction do not provide the offence relating to submission of bids such as bid-rigging offence and there is no specific provision that prescribes offence concerning to bid-rigging in public procurement like Thailand. The MACC is responsible for the prevention of bid-rigging which can be described as one of the corrupt act which they are responsible for<sup>652</sup>. However, that Act stipulates offence of give or accept any gratification on account of making a concession or entering into a contract with public body in section 20.

### 3.11.3 Governmental Authority

#### (1) Malaysian Anti-Corruption Commission (MACC)<sup>653</sup>

##### a. Constitution of the commission

The constitution of MACC differs from that of National Anti-Corruption Commission (NACC) of Thailand because the MACC is not administered by sole committee like NACC, but it is administered by 5 panel independent bodies in order to ensure being independent, transparent and professional of the organization through a check and balance mechanism<sup>654</sup>. The MACC comprises of

**1. A Chief Commissioner** is appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. However, he may appoint other officers of the commission as may be necessary for the purpose of carrying into effect the provisions of the MACC Act such as Deputy Chief Commissioners and Commissioners or Deputy Commissioners<sup>655</sup>.

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<sup>651</sup> Ministry of Finance Malaysia, *Ibid*, p. 5.

<sup>652</sup> Sharizan Sarif, "NEW FOCUS ON MYCC 2013 : BID RIGGING", *Competition Law Bulletin* 6, (September – December 2013), p. 5.

<sup>653</sup> Narong Jaiharin et al., *supra note 5*, p.218.

<sup>654</sup> Mohamad Tarmize bin Abdul Manaf and Jayantha Kumar Sen Gupta, *supra note 10*, p.8.

<sup>655</sup> This Act does not specify the constitution of the commission that how many committees are there in the MACC like that is provided in Organic Act on Counter Corruption B.E. 2542.

## 2. Five Panel independent bodies of the commission

**2.1 Anti-Corruption Advisory Board** consists of at least 7 members appointed by the Yang di-Pertuan Agong to advise the Commission on any aspect of the problem of corruption in Malaysia , to advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption to endorse proposals from the Commission made towards the efficient and effective for running of the Commission and needs of it to ensure its effectiveness , to scrutinize the annual report of the Commission and its comments before submitting them to the Special Committee on Corruption.

**2.2 Special Committee on Corruption** consists of 7 members from house of representatives (both ruling and opposition) appointed by the Yang di-Pertuan Agong to advise the Prime Minister on any aspect of the problem of corruption in Malaysia , to examine the annual report of the Commission and examine the comments of the Anti-Corruption Advisory Board.

**2.3 Complaints Committee** consists of not more than 5 members who are appointed by the Prime Minister to monitor the handling by the Commission of complaints of misconduct (which is not commission of criminal offence) against officers of the Commission.

**2.4 Operational Review Panel** consists of 7 members appointed by the Prime Minister from among experts who represent relevant professions to act as the check and balance mechanism for ongoing cases handled by the MACC. The Panel may also present its views to the MACC on cases should further clarification be required.

**2.5 Consultation and Corruption Prevention Panel** consists of not less than 7 members appointed by the Prime Minister from among individuals who represent various civil society organizations including academicians, businessmen, religious figures, media experts and social activists that can assist the MACC towards its objective of inculcating a society that does not tolerate corruption<sup>656</sup>.

### b. Competent authority

1) A Chief of Commissioner shall be responsible for the direction, control and supervision of all matters relating to the Commission and appointment, direction and control and supervision of officers. Moreover, he shall have all the powers of an officer of the Commission and shall have such powers of a Deputy Public Prosecutor as authorized by the Public Prosecutor for the purposes of MACC Act.

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<sup>656</sup> Bureau of International Affairs, Office of NCCC, ASEAN ANTI-CORRUPTION AGENCIES HANDBOOK , Office of the National Anti-Corruption Commission, 2015, pp. 66-68.

2) MACC has all the functions as follow (section 7)

a. To receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Chief Commissioner or the officers consider practicable;

b. To detect and investigate

- any suspected offence under this Act;
- any suspected attempt to commit any offence under this Act; and
- any suspected conspiracy to commit any offence under this Act;

c. To examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;

d. To instruct, advice and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;

e. To advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption;

f. To educate the public against corruption; and

g. To enlist and foster public support against corruption.

## **(2) National Coordination Committee to Counter Money Laundering (NCC)**

a. Administrative structure

NCC comprises of 16 members from many governmental authorities which relate to Anti money laundering below<sup>657</sup>

- 1) Attorney-General Chambers
- 2) Bank Negara Malaysia (BNM)
- 3) BNM Financial Intelligence and Enforcement Department (part of BNM)
- 4) Companies Commission of Malaysia
- 5) Immigration Department
- 6) Inland Revenue Board
- 7) Labuan Financial Services Authority
- 8) Malaysian Anti-Corruption Commission
- 9) Ministry of Finance
- 10) Ministry of Foreign Affairs

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<sup>657</sup> FATF and APG , Anti-money laundering and counter-terrorist financing measures - Malaysia : Fourth Round Mutual Evaluation Report , (FATF, Paris and APG, Sydney , 2015) , p. 29.

- 11) Ministry of International Trade and Industry
- 12) Ministry of Domestic Trade, Cooperatives and Consumerism
- 13) Registrar of Societies<sup>658</sup>
- 14) Royal Malaysian Police
- 15) Royal Malaysian Customs Department (RMC)
- 16) Securities Commission

The BNM works as a secretary of the NCC.

b. Competent authority

The two-pronged objectives of NCC are <sup>659</sup>

1) Policy issues

NCC is the main function to develop national policy on measures to counter money laundering or terrorism financing; co-ordinate national policies with regional and international initiatives; and agree upon action plan to counter money laundering or terrorism financing.

2) Implementation and compliance issues

NCC is responsible for ensuring Malaysia's compliance with Asia-Pacific Group on Money Laundering (APG) membership requirement and the Financial Action Task Force (FATF) Recommendations; Identifying remedy and overlap or discrepancy of Anti money laundering or Counter financing of terrorism measures; creating legislation and administrative structures for implementation of measures; and monitoring effectiveness of implemented measures.

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<sup>658</sup> The Registrar of Societies is The Registry of Societies of Malaysia is a department under the Ministry of Home Affairs manage keeping registration records relating to registered non-governmental organisations in form of societies which as provided in the Societies Act 1966.

<sup>659</sup> Mohamad Tarmize bin Abdul Manaf and Jayantha Kumar Sen Gupta, *supra note 10*, p. 62.