

Marine Cadastre Legal Framework for Malaysia

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SUMMARY

Malaysia is the maritime country and has a long coastline of about 4,384 km which is about 1,823 km in the peninsula and the rest of 2561 km in Sabah and Sarawak. This situation requires Malaysia to a better management of the marine space for marine activities in line with the concept of sustainable development. This paper underlines the highlighted pertaining issues which are related to legal framework in the implementation of marine cadastre in Malaysia. The various activities through the discussion and meetings with marine stakeholders and the focus group have been conducted. The resolutions and decision was made according the situation, cases, and activities in marine area and pertaining to related law. The result show that the detail about marine space needs to be further elaborated and legalized. The proper legal framework is finely requires to ensure the smooth implementation of the system running without the argument from any parties involved. From this study, the new marine cadastre legal framework was proposed regarding to existing legal towards the realization of marine cadastre practices in future and under the marine alienation perspective.

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1. Introduction

The coastal Malays in particular regarded the seas as natural appurtenances to the land they occupy. Sovereign Nations exercised absolute sovereignty and jurisdiction in seas covering the whole of sovereignty area of Malaysia. The seas surrounding the land played a significant role in the defence, economic, and political matters of the nation concerned. The sovereignty of a nation depends on the concept of unity between land and water expressed by the Malay word '*tanahair*' which literally means land and water is depicted to the meaning of native land. Such was already the significance and appreciation of the seas in this region. As early as 1276 during the reign of Sultan Muhammed Shah the first sovereign of the Malacca Sultanate - it was found that the Malays had already designed a set of laws of the sea applicable in sea areas within the jurisdiction of the Malacca Sultanate. These laws were referred to as the *Malacca Code*. Furthermore, introduction of marine cadastre is a new kind of sea uses, spatial extension of ongoing sea uses and the need to better protect and better arrangement of marine parcels for various users, as well as between the users and the environment. Marine cadastre legal framework is the process to define the marine alienation and marine spatial planning to allocate space for specific uses which can help to avoid user conflicts, to improve the management of marine spatial claims and sustain an ecosystem-based management of the ocean. However, the law is less relevant in recent days. Current practices on handling the marine rights are not much different with those on the ground. Marine phenomena in 3D parcels are actually different and should be treated separately. This paper examines the overview of marine cadastre issues in Malaysia related to international law, the governing law, Malaysia law in land matters such as National Land Code 1965 and the proposed marine cadastre legal framework for Malaysia and several topics to be amended in NLC 1965.

2. Marine Cadastre in Malaysia

As a maritime country Malaysia had joined as a member in the Law of the Sea Convention of 1982. Marine cadastre in Malaysia was defined as follows: A marine cadastre is a 3D marine parcel administration system with respect to the legal and systematic technical arrangement of marine spatial rights, restrictions and responsibilities for marine space activities covering

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marine natural resources, marine industry, tourism and national sea park and wildlife conservations (Ashraf et al., 2013). This definition includes the agenda of integrated coastal and marine resources management within the land policy and ocean policy framework. That is why the requirement of legal framework is needed to ensure the ability to achieve goals to be reality. From the study literature review, the focus of implementation in marine cadastre elements currently practices and carried out but not in right perspective. That is lacking due in term of legal aspect to address several issues in right matters that can be disputed by various parties. In addition from impact of related legal needed, the technical aspects are still to be limitations where no specific procedure has been taken to put in place measures that will provide transparency, accuracy and clearly on data presentation and information display to all parties involved with the marine environment. The implementation of marine cadastre needs the level of law to put the marine cadastre in which level of implementation. Marine cadastre element is proposed to enter in the existing legal such as National Land Code 1965 where this legislation is main reference for Peninsular Malaysia but must have some modification in marine elements aspects.

In Malaysia territorial water, the huge issues is in the territorial water description and the separation of power between Federal and State. In current situation, Malaysia create the new act for territorial water administration and enforce at 22 June 2012 for whole of Malaysia. This issue was continuation from replacement the Emergency (Essential Powers) Ordinance, No. 7 1969 P.U (A)307A/1969 as mentioned above to make a new jurisdiction and not under the Emergency Proclamation 1969. The Malaysia Government takes a decision to scatter three the Emergency Proclamation. The three of Emergency Proclamation is The Emergency Proclamation 1966, the Emergency Proclamation 1969 and the Emergency Proclamation 1979. Under this action, all of three Emergency Proclamation was stopped immediately and on the date 24th November 2011 the *Dewan Rakyat* was approved that all the three Proclamation was terminated on 20 Disember 2011 also done by *Dewan Negara*. From this condition, the new act must be established to conserve Malaysian territorial waters. But from the content of new act, the consideration was similar to (Essential Powers) Ordinance, No. 7 1969 P.U (A)307A/1969 but have some changes about description in term of definition and applications and ensuring parallel to UNCLOS 1982 In this act, the conclusion it is a continuation of the Emergency Ordinance 1969 and translated into a new act since the establishment of the Ordinance is not relevant in the present situation and formulated according to the event last year. Here are some excerpts contained in this Act relating to the functions and powers between the federal and state administration.

According to the statement: Paragraph 3 (1) which is related to marine territorial limits of Malaysia is like - Subject to the provisions of this Act, the width of the territorial sea of 12 nautical miles Malaysia shall for all purposes. Statement under 3(2) are mentioned about the baseline issue as stated in the quote : The baselines from which the breadth of that territorial sea is to be measured shall for all purposes be those established in accordance with section 5 of the Baseline of Maritime Zones Act 2006. Regarding to Section 5 Baseline of Maritime Zone Act 2006 state that as below 5(1) Subject to subsection (2), the baselines for the purpose of determining the maritime zones of Malaysia shall be-

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- (a) low-water line along the coast as marked on large scale charts;
- (b) Seaward low-water line of a reef as shown by the appropriate symbol on charts; or
- (c) low-water line on a low-tide elevation that is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island.

5(2) Notwithstanding subsection (1), in respect of any area for which geographical coordinates of base points have been declared under section 4, the method of straight baselines interpreted as geodesics joining the consecutive geographical coordinates of base points so declared may be employed for determining the maritime zones of Malaysia.

The above indicative of the position of Malaysia recognizes the low-water line is a line on which the determination of the maritime boundaries with consideration of the matters referred to three situation of low-water line and the first situations is the position of low water line were identified and marked on the map scale, position seaward low-water line of a reef or authenticity of essays with the symbol shown on the map and the position of the low-water line where the low-tide elevation in whole or in part is not more than 12 nautical miles from the mainland or island position.

In other issues, Malaysia was created the Exclusive Economic Zone 1984 Act which is focusing on determination and declaration the matters of Malaysia mastery in maritime area. In EEZ 1984, under the Section 3 (1) The exclusive economic zone of Malaysia as proclaimed by the King of Malaysia vide P.U(A) 115/80 is an area beyond and adjacent to the territorial sea of Malaysia and subject to subsections (2) and (4) extends to a distance of two hundred nautical miles from the baseline from which the breadth of the territorial sea is measured. Subsection (2) mention that where the there is an agreement in force on the matter between Malaysia and a State with an opposite or adjacent coast, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement. Subsection (4) where having regard to international law, state practice or an agreement referred to in sub-section(2) the King of Malaysia can considers its necessary so to do , he may by order published in the Gazette alter the limits of the exclusive economic zone determined in accordance with subsection(1).Malaysia is a federal state with marine jurisdiction and management responsibility split between the states and the central (federal) government. The amendments to the Emergency (Essential Powers) Ordinance, No7 1969 states that territorial water shall be constructed as a reference to such part of the sea adjacent to control the coast thereof not exceeding 3 nautical miles measured from low water mark. In this situation, the state control up to 3 nautical miles from low water mark whilst the federal government has jurisdiction and management responsibility from the said 3 nautical miles limits to the outer edge of the EEZ and continental shelf. By on 22th June 2012, The Emergency (Essential Powers) Ordinance, No. 7 1969 (P.U.(A)307 A/1969) was withdraw of power after the Territorial Water Act 2012 was established. This act is to create the Malaysia territorial water to replace the existing, The Emergency (Essential Powers) Ordinance, No. 7 1969 (P.U. (A)307 A/1969 were established under Emergency Proclamation 1969.

In other issues, Malaysia also has lacking due to the LAT demarcation because not ready in proper marine legal about the determination of LAT and not highlighted the important of big

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scale mapping in coastal area although stated in Territorial Water Act 2012. Moreover, the legal documentation is a part of important in several issues involved the marine cadastre elements and aspect, and in Malaysia is no provision was established. It is needed to supporting the policy, rules and regulation for implementation which is it important in relating the marine alienation issues. Malaysia was practices the marine alienation indirectly and that practices is not occurred in suitable marine area and environment under the marine spatial management context. This is lacking due to zoning issue about the marine alienation involved in rights purposes that are applicable.

3. United Nation Law of the Sea 1982 related to National Marine Regime

The administration of marine area in Malaysia is governed by legally defined boundaries and follows United Nations Convention on the Law of the Sea (UNCLOS) which is Malaysia itself can claim, manage and utilize its maritime territories (United Nations, 1983). Based on Country Report on Administering the Marine Environment by Ahmad Fauzi Nordin, 2006, Malaysia ratified UNCLOS in October 1996. In line with provisions of UNCLOS, is :

- i. The Territorial Sea, which is the belt of sea measured 12 nautical miles (nm) seaward from the territorial sea baseline. On 2nd August 1969 an Ordinance under Article 150(2) of the Constitution known as the Emergency (Essential Powers) Ordinance, No.7, 1969 was promulgated. Under this Ordinance, the territorial waters of Malaysia (except in the Straits of Malacca, the Sulu Sea and the Celebes Sea) were declared as 12 nautical miles from the base line determined in accordance with UNCLOS.
- ii. The contiguous zone which is the belt of sea, contiguous to the territorial sea, measured 24Nm seaward from the Territorial Sea Baseline.
- iii. The Exclusive Economic Zone, which is the area beyond and adjacent to the territorial sea, measured 200Nm seaward from the Territorial Sea Baseline.

This provision is important to guide the marine cadastre implementation in term of legal aspect to ensure that focus of practices must parallel to UNCLOS 1982 although that legal created focusing on local perspective. Malaysia rectified the UNCLOS 1982 on 14th October 1996 and highlighted the baseline and maritime limitation shown by the big scale chart presented by the list of base point with the geodetic datum. In the context of determination of base point and baseline, Malaysia was practices the straight base line approach. Hence, through the endorsement of Baseline of Maritime Zone Act 2006, the Malaysian baselines was established by Malaysian Government and deposit them into United Nation Convention to ensure the sovereignty of Malaysia maritime boundary was declared and avoid the conflict on the next future.

4. National Land Code 1965 in Malaysia

Until now, Malaysia was established 77 national laws pertain to marine matters covering diverse matters related to marine activities such as shipping, navigation, transportation, petroleum and others. The list of national laws pertaining to marine matters is attached at Appendix A. This paper focuses on National Land Code(NLC) 1965 because it was main

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reference and discussing on land matters in Peninsular Malaysia. NLC 1965 come into force from January 1, 1966 and contains 447 sections, 16 schedules, 6 divisions, 35 divisions and have been through about many amendments regarding the current issues. NLC 1965 is nearly 48 years old and it is largely a re-enactment of earlier laws. National Land Code 1965 has undergone many changes and revisions and the latest was in February 2012. In regards to delivery system where there are more than 40 times the scale of amendments to the National Land Code, which was performed when there is an urgent need to address issues land administration. Latest amendments effected on the National Land Code 2008 can be a launching pad to the evolution of electronic land administration system for the states of Peninsular Malaysia. However, the NLC 1965 governs mainly for land administration purposes and its authority cover until HAT situation and not discussing in details beyond that situation especially on marine environment. The purpose of marine cadastre is not there and need the revision and amendments to answering the issues of marine cadastre. NLC 1965 is still relevant to marine cadastre as a new practice on the water issues and limits. It needed in marine cadastre practices to amended through a special modification of any statement in related section which are connected and can be correlated with the marine cadastre factors.

5. The Integration of Institution in Marine Cadastre from Malaysia Perspective

However, efforts in establishing the perfect implementation of marine cadastre as a practice have been carried out over the past five years. Below in Figure 1 was shown a resolution issued as a clear picture of the marine cadastre relate to general concept from Malaysia perspective to proposed and the connection to main institutions which is suggested to driving the marine cadastre very well.

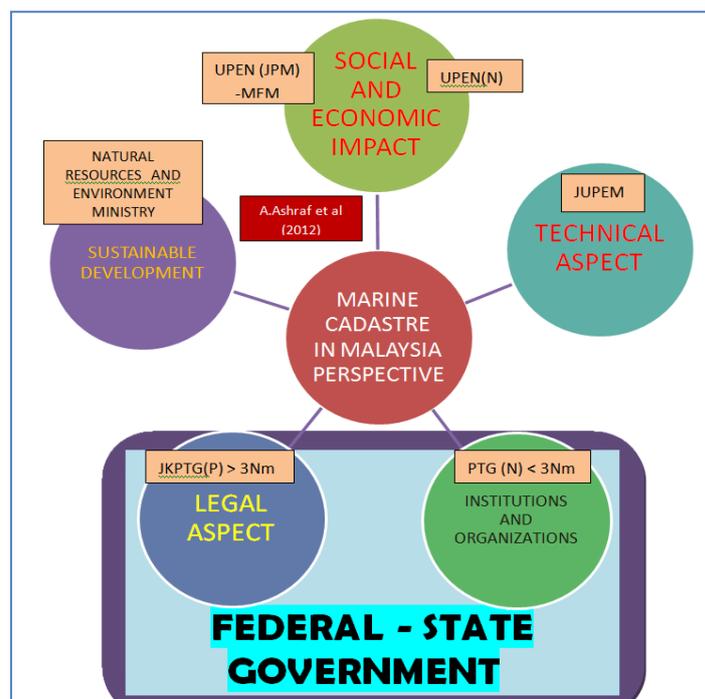


Figure 1: Marine Cadastre Component and Institution Involved

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Figure 1 shows there are five main components that support the general concept of marine cadastre where it covers the legal, institutional and organizational, technical aspects, the social and economic impact and sustainable development. From this aspect of the proposed major institutions involved in marine alienation is where a combination of federal and state governments work in two main aspects related to the law and institutions involved under the law stated. This state of things between federal authority and state where under 3 nautical miles dependent on the power of the state and the State Director of Lands beyond 3 nautical miles under the Director General of the Department of Land and Minerals. For technical management, DSMM is the most appropriate institution to highlight the best technical methods to produce a robust procedure in the production of marine title. Marine cadastre also requires that institutions make a detailed study to look at the social and generating profits realized from the implementation of the marine cadastre. In addition, marine environmental should always be supervised properly established ecosystem as well as development activities. Therefore, for sustainable development has been proposed for the Ministry of natural resources and the environment to put the responsibility for carrying out the specific control activities to ensure that the marine natural resources are not damaged and cause a loss in the country.

6. The Proposal of Marine Cadastre Legal Framework

For the purposes of marine cadastre in Malaysia, the picture below shows a proposed legal framework that to are structuring of marine cadastre applications in Malaysia. The figure below shows the position of the marine cadastre placed in two administrative authorities is clearly stated in the Territorial Water Bill 2012. For the implementation of the marine cadastre in Malaysia, it is proposed implementation in their positions only three nautical miles of the State Authorities have full power to control marine area covers three areas of airspace above the water, water column, sea bed and subsea. This framework specify where the federal government has full administrative powers in the position three nautical miles out to sea where it will be subject to federal legal requirements for existing law more than three nautical miles and also in international law such as UNCLOS 1982 or any agreement involving agreements with neighboring countries. While the positions of power under the state government is involved specifically about the implementation of the marine cadastre which include some important aspects that should be implemented in advance of

- i. Derivation and delineation of lowest astronomical tide
- ii. Large scale mapping produce
- iii. Positioning and delineation of littoral zone
- iv. Beginning of marine cadastre and ending of land cadastre
- v. Technical applications requirement
- vi. Designation of institutions involved
- vii. Standard of procedure for marine alienation.
- viii. The guideline and regulation for marine right.
- x. Marine space tax

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Once implemented amendments or additions to the existing legislation, the framework emphasizes that institutions will be held accountable by them and the institution in particular will perform in accordance with section has been provided to him by the amendment of the existing section or in addition to a new section. It is based on their policy regarding to marine cadastre practice was thought appropriate for the implementation of Malaysia. The development of policy and law are important issue and should be proposed on suitable legislation and viewed in detail and that matter should be concentrated based on current marine environmental factors. The main concern is to be seen in connection with marine elements such as the position of the marine area affected by factors such as time, changes in the vertical aspect of the ever changing natural environment factors of current and waves, the characteristics of marine biodiversity, marine border demarcation and documentation views appropriate to reflect the marine space and given ownership. The important point in the application of marine cadastre implementation is the administrative institutions where has a power and can make a decision. Therefore these institutions should not be burdened with other responsibilities and should be separated scope of their field. For example at present, application management and administration of marine territory under three nautical miles still under the District Land Office or the State Land and Mines Office, while the agencies addled with land administration and management is also a big responsibility. By taking into account these factors, the position of the marine cadastre should be placed under a new institution and may be known as the Department of Marine Space Administration which only focuses on the management of the administrative affairs of the marine regions and functions remain the same as the land office but different arrangement of marines on the issue of alienation and problems the marine environment.

For the right to private issue and regarding to the concept of alienation, the right to private sector is the administration and management of properties available in all legislation relating to the administration and management of the property, for marine situation this right also extended the concept of land administration to marine space but occur under a number of different factors to the grant land ownership. Matters relating to marine alienation is not specifically open to all levels of society, is where specialization is still subject under control and the State Government's decision. However, the legal framework of marine cadastral outline some aspects that require priority of alienation aspects of marine related tourism purposes , cables and pipelines , aquaculture , port management and the right part of the cruise shipping sector . In the perspective of the State, marine alienation is a sound investment and basic needs which is on the grounds of social needs and also has a big impact on the economy of the country and not just the state but also all aspects of life.

Discussing on rights to public issue is about the society right and in this aspect; the basic thing is not about the giving the marine alienation but the concept used is related to equal right for society. This aspect is fundamental in ensuring equal right to use the ocean is still in line with the philosophy that ocean is free and this should be emphasized in the use of marine space in which to put a clear purpose in the legislation so that local and foreign societies can enjoy a marine environment that is free and not bound to any restrictions. As such, the right of access to the beach should not be blocked, and give the right to people to enjoy the beach and also as a boat mooring area. Besides fishing rights in connection with priority should also be given to the community and in accordance with the Fisheries Act 1985.

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The right to sail is also a civil rights defined in existing legislation which also touched on the matter of international law UNCLOS 1982 and the International Maritime Organization (IMO).

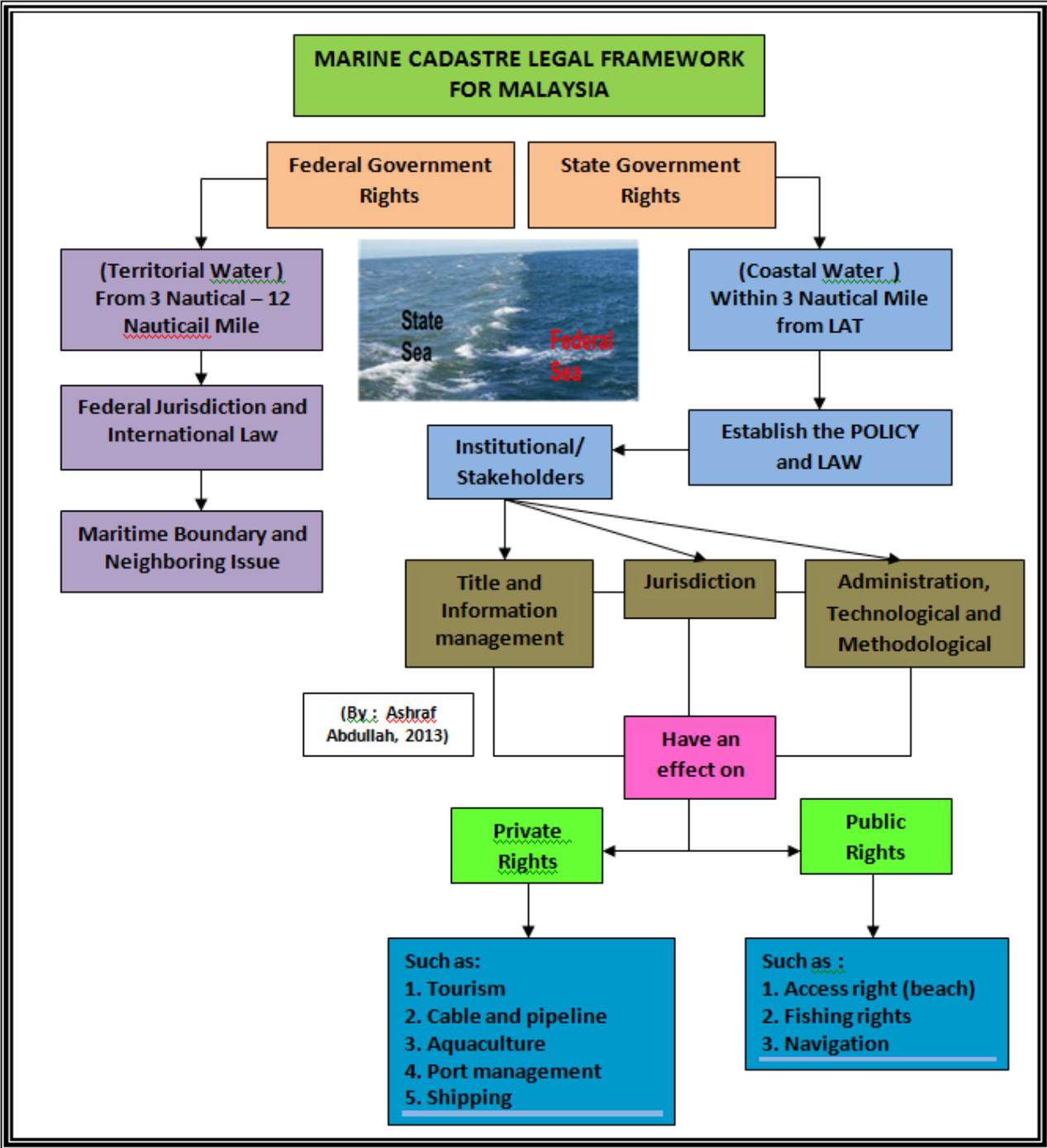


Figure 2: The Proposal of Marine Cadastre Legal Framework for Malaysia

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In order to achieve the capability of implementation, several issues where address in National Land Code 1965 must be proposed to amend and ensure that proposal is under scope and Malaysia perspective. This matter should be cover in social and relationship context with the community, institutions involved, rules and regulation would be suggested to implemented, technical approach and politics in land and ocean matters. Table I is show the several topics in suggested to amendments in NLC1965.

Table 1: Several topics in the proposed for amendments in NLC1965

Issues	Topics
1	Review the Title Name of NLC1965 1965 For Application Compatibility in Marine Environment.
2	The Interpretation Issues and Concepts of Marine Alienation
3	The Definition of the Marine Spaces as a Title
4	Determination of Marine Boundary Between Local States
5	The Issue Of Four Dimensional Rights in Marine Spaces
6	Issues in Defining Coastline Boundaries and Littoral Zone
7	The Commencement of Marine Cadastre Applications
8	Display of Marine Space Alienated

7. Conclusion

Marine cadastre is the most important to ponder especially in the legal structure for practices and guidelines. It is needed for implementation which is only the recognized legal can be address for it. This is requirement for recent days to ensure the marine resources could be maximizing exploitation to gain the benefit and profit. It should be beginning from legal aspect as the driver the great implementation and solution in order to answering all the problems facing and need to update follows the changing of requirements and marine environments itself. This paper is very important and as the starting point to look deeper in term of legal involving and requires emphasis to ensure marine cadastre can be reality soon. Generally, marine cadastre is the platform to exploits as new resource for government and public to share the natural awards to them in creating the better life for future.

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BIOGRAPHICAL NOTES

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Appendix A

NO	CATEGORY	LAWS AND REGULATIONS
1	Port	<ul style="list-style-type: none"> ➤ Penang Port Commission Act1955(Act 140) ➤ Port Authorities Act, 1963(Act 488) ➤ Port Workers(Regulations of Employment),2000(Act607) ➤ Sabah Port Authority(Consequential Provisions)Act 1968(Act25) ➤ Declaration of an Area in Bintulu District to be a Federal Port Act 1979(Act217) ➤ Bintulu Port Authority Act 1981(Act243) ➤ Ports (Privatisation)Act 1990(Act422)
2	Shipping	<ul style="list-style-type: none"> ➤ Carriage of Goods by Sea Act, 1950(Act527) ➤ Merchant Shipping Ordinance, 1952 ➤ Merchant Shipping Ordinance, 1960(Sabah) ➤ Merchant shipping Ordinance, 1960(Sarawak) ➤ State Boat Rules
3	Light House	<ul style="list-style-type: none"> ➤ Federation Light Dues Act,1953(Act 250)
4	Non Living Resources	<ul style="list-style-type: none"> ➤ Petroleum Mining Act, 1966(Act95) ➤ Petroleum Development Act, 1974(Act144) ➤ Petroleum and Electricity(Control of Supplies)Act,1974(Act128) ➤ Petroleum (Safety Measures) Act, 1984(Act302) ➤ Petroleum (Income Tax)Act, 1974(Act543)
5	Living Resources/Fisheries	<ul style="list-style-type: none"> ➤ Fisheries Act,1985(Act317) ➤ Fisherman' Association Act,1971(Act44) ➤ Lembaga Kemajuan Ikan Malaysia Act1971(Act49) ➤ National Forestry Act, 1984(Act313)
6	Natural Resources	<ul style="list-style-type: none"> ➤ Continental Shelf Act,1966(Act83) ➤ Baseline of Maritime Zone Act, 2006(Act660)

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		<ul style="list-style-type: none"> ➤ Exclusive Economic Zone Act,1984(Act311) ➤ Sarawak Natural Resources and Environment(Prescribed Activities) Order, 1994 ➤ Sabah Conservation of Environment(Prescribed Activities)Order, 1999 ➤ National Land Code 1965
7	Jurisdiction	<ul style="list-style-type: none"> ➤ Emergency(Essential Powers)Ordinance,1969(Act216) ➤ Extra Territorial Offences Act, 1976(Act163) ➤ State Land Rule
8	Enforcement	<ul style="list-style-type: none"> ➤ Immigration Act 1959/63(Revised 1975)(Act 155) ➤ Internal Security Act, 1960(Act82) ➤ Police Act, 1967(Act344) ➤ Malaysian Maritime Enforcement Agency Act, 2004(Act633) ➤ Military Maneuvers Act, 1983(Act295) ➤ Armed Forces Act,1972(Act77) ➤ Penal Code(Revised 1977)(Act 140) ➤ Custom Act,1967(Revised 1980)(Act 235) ➤ Evidence Act, 1950(Revised 1971)(Act56) ➤ Poison Act, 1952 (Revised 1989)(Act366)
9	Tourism	<ul style="list-style-type: none"> ➤ Malaysia Tourism Promotion Board Act, 1992(Act 481) ➤ Tourism Industry Act,1992(Act482) ➤ Tourist Development Corporation of Malaysia Act,1972(Act481)
10	Heritage and Antiquity	<ul style="list-style-type: none"> ➤ Antiquities Act,1976(Act168) ➤ Antiquities and Treasure Ordinance, 1957
11	Telecommunication	<ul style="list-style-type: none"> ➤ Telecommunication Act, 1950(Act588) ➤ Telecommunication Services(Successor Company) Act, 1985(Act 322) ➤ Communication and Multimedia Act, 1998(Act588)
12	Dispute Settlement	<ul style="list-style-type: none"> ➤ Convention on the Settlement of Investment Disputes Act, 1966(Act392) ➤ Arbitration Act, 1952(Revised 1972)(Act93) ➤ Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act, 1985(Act320)
13	Forestry/Wildlife	<ul style="list-style-type: none"> ➤ National Forestry Act, 1984(Act313) ➤ Protected Areas and Protected Places Act,1959(Act298) ➤ Protection of Wild Life Act, 1972(Act76) ➤ Fauna Conservation Ordinance(Sabah), 1963 ➤ Wildlife and Birds Protection Ordinance, 1955 ➤ Forest Enactment 1968(Sabah) ➤ Forest Enactment 1954(Sarawak) ➤ Planted Forest Rules of Sarawak, 1997 ➤ Land Conservation Act, 1960 ➤ Malaysian Forestry Research and Development Board Act, 1985 ➤ National Parks and Nature Reserves Ordinance, 1998

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