



ENVIRONMENTAL LAW AND POLICY IN SABAH: FROM RIDGE TO REEF

VOLUME 1: CHRONOLOGY OF LAWS

DRAFT FOR PEER REVIEW

Disclaimer, Acknowledgements and Call for Inputs

Disclaimer: This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

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Call for inputs: We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas (holly@foreversabah.org) and Harry Jonas (harry@foreversabah.org).

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OVERVIEW

This volume provides an overview of each law currently referenced in the series: *Environmental Law and Policy in Sabah*. Where the series is expanded, this volume will also be revised. As such, it does not yet provide a comprehensive list of national and state legislation constituting the legal and institutional arrangement relating to Sabah's land, waters, natural resources and cultural heritage. However, it does provide a strong start to the development of that kind of resource and will eventually be fully comprehensive. These include:

1. 1925 Cruelty to Animals (Prevention) Ordinance,
2. 1930 Land Ordinance,
3. 1930 Local Government Ordinance,
4. 1950 Land Acquisition Ordinance,
5. 1950 Town and Country Planning Ordinance,
6. 1956 Drainage and Irrigation,
7. 1960 Arms Act (revised 1978) (Act 206),
8. 1962 Animals Ordinance,
9. Country Land Utilization Ordinance (1962),
10. 1966 Continental Shelf Act (Revised 1972) (Act 83),
11. 1968 Forest Enactment,
12. 1968 Forest (Constitution of Forest Reserves and Amendment) Enactment,
13. 1971 Firearms (Increased Penalties) Act (Act 37),
14. 1974 Environmental Quality Act (Act 127),
15. 1980 National Parks Act (Act 80),
16. 1981 Sabah Forestry Development Authority Enactment,
17. 1984 Parks Enactment,
18. 1984 Exclusive Economic Zone Act (Act 311),
19. 1985 Fisheries Act (Act 317),
20. 1997 Wildlife Conservation Enactment,
21. 1997 Cultural Heritage (Conservation) Enactment,
22. 1998 Water Resources Enactment,
23. 2000 Sabah Biodiversity Enactment,
24. 2002 Ports and Harbours Enactment,
25. 2002 Environment Protection Enactment,
26. 2003 Water Supply Enactment,
27. 2003 Inland Fisheries and Aquaculture Enactment,
28. 2012 Territorial Sea Act (Act 750).

For more information on each law, including the responsible agency and institutional framework, please see the dedicated volumes. The laws referenced in this brief are set out in chronological order and do not reflect their relative importance. A revised version of this Volume will provide further background explanation about Sabah's laws and institutions as they relate to the national framework.

1. CRUELTY TO ANIMALS (PREVENTION) ORDINANCE

The *Cruelty to Animals (Prevention) Ordinance (1925)* establishes Sabah's laws for the prevention of cruelty to animals. Any person found guilty of the offences under the Enactment can be liable for a fine of five hundred ringgit or imprisonment for six months, or both.¹

2. LAND ORDINANCE

The *Land Ordinance (1930)* was enacted to regulate the use and alienation of land in Sabah. The Land Ordinance describes alienated land as land that is leased or disposed State land on behalf of the Government. Alienated land may require payment such as rent or another type of premium.² The Land Ordinance establishes native customary rights³ and special provisions in the Ordinance provides for codification of traditional land claims to native title. Please note that there is a dedicated brief on the Land Ordinance and related legislation.

3. LOCAL GOVERNMENT ORDINANCE

The *Local Government Ordinance (1961)* establishes Sabah's laws for the control and regulation for local government. The District Council, Town Board or Municipal Council have the authority to perform the functions of the Local Government Ordinance over public amenities.⁴ Public amenities include recreation grounds, open spaces and parks.⁵ Once a piece of land is declared to be a Park or Nature Reserve, the Local Government Ordinance no longer applies.⁶

4. LAND ACQUISITION ORDINANCE

The *Land Acquisition Ordinance (1950)* establishes Sabah's laws for the acquisition of land by the Yang di-Pertua Negeri for the public. The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a public purpose.⁷ The Yang di-Pertua Negeri also has the power under the Land Acquisition Ordinance to determine if the State should temporarily occupy a piece of unoccupied land and use it for a public purpose.⁸ If the Yang di-Pertua Negeri believes a piece of land is suitable for a public purpose he may give permission to complete an anticipated project.⁹

5. TOWN AND COUNTRY PLANNING ORDINANCE

The *Town and Country Planning Ordinance (1950)* establishes rules relating to the

¹ Cruelty to Animals (Prevention) Ordinance, 1925, section 3 (a)-(e).

² Land Ordinance, 1930, section 4, "alienate".

³ Land Ordinance, 1930, section 15, (a)-(g).

⁴ Local Government Ordinance, 1961, section 2, interpretation of "Authority".

⁵ Local Government Ordinance, 1961, section 49 (53).

⁶ Parks Enactment, 1984, section 13 (3).

⁷ Land Acquisition Ordinance, 1950, section 3 (1).

⁸ Land Acquisition Ordinance, 1950, section 11 (1).

⁹ Land Acquisition Ordinance, 1950, section 11 (1).

development of rural and urban towns, land and other areas, to preserve and improve matters and amenities for the area. The Town and Country Planning Ordinance gives the Director of the Department of Town and Regional Planning the authority to facilitate the construction of works relating to lights, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.¹⁰

6. DRAINAGE AND IRRIGATION ORDINANCE

The *Drainage and Irrigation Ordinance (1956)* provides regulation for drainage and irrigation areas. The Ordinance contains provisions for the construction and facilitation of waste channels and water resources, particularly in urban areas establishes rules and regulations for drainage and irrigation areas in Sabah. The Drainage and Irrigation Committee (the Committee) is authorized to make decisions and policies in accordance with the provisions of the Ordinance. One of the functions of the Committee is to classify lands for drainage and irrigation utilization.¹¹

7. ARMS ACT

The *Arms Act (1960)* establishes the rules relating to the possession, inspection, distribution and maintenance of arms, imitation arms and ammunition. The Arms Act is a Federal Enactment that regulates the laws for the Peninsular of Malaysia, the State of Sarawak and the State of Sabah. The Arms Act regulates and establishes laws for the distribution of firearm licences. All firearm licences must be obtained before any person can receive a hunting licence through the Wildlife Enactment.

8. ANIMALS ORDINANCE

The *Animals Ordinance (1962)* amends and consolidates laws for the livelihood of animals and controls the introduction and expansion of animal and bird diseases in Sabah. The Yang di-Pertua Negeri has the power to determine the list of animals that should not be imported to Sabah. In order to import any animal or bird, a person must obtain a licence to import that specific animal. The Director of Veterinary Authority has the power to administer a licence for importation.¹²

9. COUNTRY LAND UTILIZATION ORDINANCE

The *Country Land Utilization Ordinance (1962)* establishes the Land Advisory Committee with the power to specify certain land as requiring cultivation. The Ordinance outlines the operation and role of this committee.

10. CONTINENTAL SHELF ACT

The *Continental Shelf Act (Revised 1972)* recognizes Federal jurisdiction to the seabed, allowing for the Federal Government's right to exploit natural resources on

¹⁰ Town and Country Planning Ordinance, 1950, Part V, Public Services.

¹¹ Drainage and Irrigation Ordinance, 1956, section 4 (1).

¹² Animals Ordinance, 1962, section 4.

and beneath the seabed.¹³ The Federal Government has jurisdiction of the Continental Shelf from the point beyond the State territorial waters. The *Continental Shelf Act* limits the extraction of minerals and natural resources beneath the continental shelf to the Federal Government.¹⁴ Exceptions are made to activities that have been granted a license.

11. FOREST ENACTMENT

The *Forest Enactment (1968)* provides the cornerstone of Sabah's forest-related legislation, and establishes rules relating to the preservation of forests, regulation and control of forest produce. There are seven classes of Forest Reserves in Sabah, which include Protected, Commercial, Domestic, Amenity, Mangrove, Virgin Jungle and Wildlife Reserve Forests.¹⁵ Please note that there is a dedicated brief on the Forest Enactment and related legislation.

12. FOREST (CONSTITUTION OF FOREST RESERVES AND AMENDMENT) ENACTMENT

The *Forest (Constitution of Forest Reserves and Amendment) Enactment (1984)* regulates the establishment of Forest Reserves by law and amends the Forest Enactment, 1968. All of the Forest Reserves listed in the Enactment will be considered the only Forest Reserves.¹⁶

13. FIREARMS (INCREASED PENALTIES) ACT

The *Firearms (Increased Penalties) Act, 1971*, establishes increased penalties for the use of firearms in certain offences that include firearms. Offences include extortion, robbery and resisting arrests. The *Arms Act* is a Federal Enactment that regulates the laws for the Peninsular of Malaysia, the State of Sarawak and the State of Sabah. Penalties under the Firearms act are specific to each type of possession of a firearm or imitation firearm.

14. ENVIRONMENTAL QUALITY ACT

The *Environmental Quality Act (1974)*, applying to all states of Malaysia, was legislated to improve the environment and to prevent, abate, and manage pollution threats.¹⁷ The *Environmental Quality Act* regulates the discharge or spilling of any oil or mixture containing oil and wastes into Malaysian Waters.¹⁸ Only individuals or entities carrying a license may be allowed to emit or discharge an environmentally hazardous substance, pollutant or waste into the atmosphere.¹⁹ The Environmental

¹³ Continental Shelf Act, 1966.

¹⁴ Continental Shelf Act, 1966, Section 4.

¹⁵ Forest Enactment, 1968, section 5, (a)-(g).

¹⁶ Forest (Constitution of Forest Reserves and Amendment) Enactment 1984, section 2.1.

¹⁷ Environmental Quality Act 1974, Section 1.

¹⁸ Environmental Quality Act 1974, Section 27 and Section 28.

¹⁹ Environmental Quality Act 1974, Section 22.

Quality Council was established to serve as an advisor to the Minister on relevant matters pertaining to the *Environmental Quality Act*.²⁰ The Department of Environment Malaysia is responsible for enforcing the *Environmental Quality Act* and promoting conservation initiatives.²¹

15. NATIONAL PARKS ACT

The *National Parks Act (1980)* is a Federal law that provides for the establishment of National Parks and Reserves in Malaysia. The *National Parks Act* explicitly does not apply to the states of Sabah and Sarawak.²² All Parks and National Parks, in Sabah are reserved for management under the Sabah Parks Department. As a result, marine protected areas in Sabah have generally been enacted under the two Sabah's laws, the *Parks Enactment 1984* or *Wildlife Conservation Enactment*.

16. SABAH FORESTRY DEVELOPMENT AUTHORITY ENACTMENT

The *Sabah Forestry Development Authority Enactment (1981)* sets out the powers of the Forestry Development Authority (the Authority). The Forestry Development Authority (the Authority) should coordinate and regulate forest products and forest product activities. The Authority should also supervise and develop areas for extraction and planting, promote and supervise afforestation and reforestation, and carry out the development of forestry based settlement schemes.²³

17. PARKS ENACTMENT

The *Parks Enactment (1984)* provides the cornerstone of Sabah's Park- and Nature Reserve-related legislation, and establishes rules relating to the preservation of geographical geological, biological and historical areas for the people of Sabah.²⁴ The Board of Trustees of Sabah Parks will be responsible for initiating, coordinating and controlling all activities for Sabah's Parks and Nature Reserves.²⁵ The Board has the power to make any addition regulations to carry out the enactment but cannot make any additions to their established posts.²⁶ Please note that there is a dedicated brief on the Parks Enactment and related legislation.

18. EXCLUSIVE ECONOMIC ZONE ACT

The *Exclusive Economic Zone Act (1984)* was passed to regulate offshore activities in the Exclusive Economic Zone and continental shelf of Malaysia. The Exclusive Economic Zone Act establishes the EEZ as an area adjacent to and beyond the

²⁰ Environmental Quality Act 1974, Section 4(1) and 4(2).

²¹ Department of Environment Malaysia, <http://www.doe.gov.my>.

²² National Parks Act, 1980 .

²³ Sabah Forestry Development Authority Enactment 1981, section 24.

²⁴ Management Plan for the Semporna Islands Park, Part 10. Legal Aspects and Regulations, 2010.

²⁵ Parks Enactment, 1984, section 45.

²⁶ Parks Enactment, 1984, section 59 (1), 42.

territorial sea of Malaysia. Within the EEZ, Malaysia possesses the authority to exercise its sovereign rights. The right extends to activities such as the conservation and management of living and non-living natural resources. The Government may also economically exploit and designate the use of EEZ for the production of energy from water, currents and winds.²⁷

19. FISHERIES ACT

The *Fisheries Act (1985)* and amended in 1993 regulates Malaysia's fisheries waters through measures for conservation and management of maritime fishing and fisheries. The Act extends to regulation of maritime and estuarine fisheries according to State laws.²⁸ The Federal Constitutional allows for the Federal Government to regulate matters on turtles and riverine fishing in the context of conforming to State laws.

20. WILDLIFE CONSERVATION ENACTMENT

The *Wildlife Conservation Enactment (1997)* provides the cornerstone of Sabah's wildlife-related legislation, and establishes rules relating to the conservation and management of wildlife and its habitat. The *Wildlife Conservation Enactment* has five major areas of focus. These Include: wildlife sanctuaries; conservation areas; protection of animals; protection of plants; and wildlife hunting areas.

The Sabah Wildlife Department is responsible for administering and enforcing the *Wildlife Conservation Enactment*..²⁹ Please note that there is a dedicated brief on the Wildlife Enactment and related legislation.

21. CULTURAL HERITAGE (CONSERVATION) ENACTMENT

The *Cultural Heritage (Conservation) Enactment (1997)* provides the cornerstone of Sabah's cultural heritage-related legislation, and establishes provisions for the preservation and enhancement of the State's heritage. The *Cultural Heritage (Conservation) Enactment* has three major areas of focus. These Include: Cultural Heritage Sites & Conservation Areas; purchasing land; and maintaining and repairing areas.

The State Cultural Heritage Council was established under the Cultural Heritage (Conservation) Enactment and is responsible for advising the State Government on policy matters, administration and management of Cultural Heritage and Conservation Areas.³⁰ The State Government is responsible for the control, enforcement, development, preservation and conservation of all Cultural Heritage

²⁷ Exclusive Economic Zone Act 1984, Section 4(a).

²⁸ Fisheries Act 1985, Section 1. (Act 317).

²⁹ Wildlife Conservation Enactment 1997, section 3.

³⁰ Cultural Heritage (Conservation) Enactment, 1997, section 3 (1).

Sites and Conservation Areas.³¹ Please note that there is a dedicated brief on the Cultural Heritage (Conservation) Enactment and related legislation.

22. WATER RESOURCES ENACTMENT

The *Water Resources Enactment (1998)* provides the cornerstone of Sabah's water resource-related legislation and establishes rules relating to the sustainable management and efficiency of water activities³², Water Conservation Areas and Water Protection Areas. The *Water Resources Enactment* has eight major areas of focus. These include: water protection areas; water conservation areas; river and shore reserves; floodplain management areas; catchment management plans; water usage; water activities, and water activity licences. Please note that there is a dedicated brief on the Water Resource Enactment and related legislation.

23. SABAH BIODIVERSITY ENACTMENT

The *Sabah Biodiversity Enactment (2000)* establishes the Sabah Biodiversity Council³³ and Sabah Biodiversity Centre, and provides the cornerstone of Sabah's biodiversity-related legislation, and establishes rules relating to the conservation and sustainable use of biological resources. The *Sabah Biodiversity Enactment* has four major areas of focus. These include: biological diversity, biological resources, and associated traditional knowledge; access licences; restrictions, and authorized officers.

24. ENVIRONMENT PROTECTION ENACTMENT

The *Environment Protection Enactment (2002)*, and amended 2004 was established to ensure the protection of the environment.³⁴ The Enactment primarily regulates in the area of pollution control affecting land and natural resources.³⁵ The Enactment addresses the standard for implementing policies and plans relating to activities harmful to the environment. The Enactment contains provisions for the facilitation, planning and implementation of environmental protection policies.³⁶ The Enactment also provides restrictions on any activity that may create a significantly adverse impact on the environment. Restrictions are allowed for the use of land, either on the surface or below the surface.³⁷

The Environmental Protection Council (the Council) was formed under the Enactment to provide advice to the State Government on environmental issues and to enforce the provisions of the Enactment. The Environment Protection

³¹ Cultural Heritage (Conservation) Enactment, 1997, section 5.

³² "[W]ater activities" are defined as taking water from a body of water, returning water to a body of water by artificial means, controlling, diverting or mitigating floodwaters outside of a Floodplain Management Area or conducting a water body alteration activity. Water Resources Enactment, 1998, section 17 (1), (a)-(d).

³³ Sabah Biodiversity Enactment, 2000. section 3 (1)(a).

³⁴ Environment Protection Enactment, 2002.

³⁵ James Lam Chee Seng, *Environment Law in Malaysia (Borneo Edition)* 2007.

³⁶ Environment Protection Enactment 2002, Section 9.

³⁷ Environment Protection Enactment 2002, Section 20.

Department is required to collaborate with the Environment Protection Council to provide advice on strategies and environmental management plans. Please note that there is a dedicated brief for the Environment Protection Enactment and related legislation.

25. PORTS AND HARBOURS ENACTMENT

The primary legislation relating to Sabah's ports and harbours is the *Ports and Harbours Enactment (2002)*, which regulates activities within Sabah's Coastal Zone.³⁸ The *Sabah Ports Authority Enactment (1981)* is also a related piece of legislation, which provides for the establishment of the state statutory body responsible for regulating Sabah's Ports³⁹ and Harbours.⁴⁰

26. WATER SUPPLY ENACTMENT

The *Sabah Water Supply Enactment (2003)* replaced the Water Supply Ordinance (1961) and was passed to provide for the control and regulation on the supply and distribution of water. The Enactment primarily contains provisions regulating the set up and use of water supply systems, with some emphasis on actions altering supply of water and the water systems.⁴¹ In relation to coastal areas, the misuse and lack of implementation of regulations has raised concerns of sewerage and pollution of water supply.

The State Water Authority is established in the Water Supply Enactment to oversee the custody, management and administration of the water supply system independent to the Water Resources Enactment but could be suitable for delegation of powers from the Director.⁴²

27. INLAND FISHERIES AND AQUACULTURE ENACTMENT

The *Inland Fisheries and Aquaculture Enactment (2003)* provides sustainable development and management regulations for inland fisheries, aquaculture and other related matters in Sabah. This Enactment is not yet in force but should be used as a guideline for regulations that may be relevant for the future.

28. TERRITORIAL SEA ACT

The recently enacted *Territorial Sea Act (2012)* was passed to define the boundaries of Malaysia's territorial waters. The territorial sea is recognized as Malaysia's sovereign right to the bed and subsoil. For the States in Peninsular Malaysia,

³⁸ Ports and Harbours Enactment 2002 and its subsidiary regulations known as Ports and Harbours Regulation 2008.

³⁹ The Ports in Sabah are determined based on declaration in the Gazette, see Sabah Ports Authority Enactment 1981, Section 3.

⁴⁰ The Ports Regulation (1968) is a subsidiary legislation under the Sabah Ports Authority Enactment, and was described in James Lam Chee Seng, *Environmental Law In Malaysia (Borneo Edition)* 2007, p. 51-52.

⁴¹ Sabah Water Supply Enactment 2003.

⁴² Water Supply Enactment, 1950, section 4 (2).

jurisdiction is held in the territorial sea at twelve nautical miles from the low-water line depending on the baseline measurement.⁴³ The Baseline of *Maritime Zones Act (2006)* is referenced to under the *Territorial Sea Act* to determine the baseline measurement of maritime zones in Malaysia.⁴⁴

⁴³ Territorial Sea Act 2012, Section 3(1).

⁴⁴ Baseline of Maritime Zones Act 2006, Section 5.