

# CURRENT LEGAL ISSUES CONCERNING MASJID IN MALAYSIA

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## Abstract

*The legal history of masjid in Malaysia can be traced back to the period of British administration prior to the Independence in 1957. The law was introduced to protect the sanctity of masjid in the Straits Settlement, the Federated Malay States and the Non-Federated Malay States. After the Independence, by virtue of the Federal Constitution, the management and administration of masjid in Malaysia is governed by the states. It follows that each state has its own regulations and as a result, there are some differences between the State's Enactments. The paper seeks to discuss the legal framework regulating masjid in Malaysia with focus on some selected State Enactments currently in force in Malaysia. This will be done by analysing the provisions of five selected State Enactments namely the Administration of the Religion of Islam Enactment (Negeri Selangor) 2003, the Administration of Islamic Law Act (Federal Territories) 1993, the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003, the Majlis Ugama Islam Negeri Sabah Enactment 2004 and the Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994. The paper also discusses selected legal issues concerning masjid in Malaysia to provide clear picture of the current legal position of masjid in Malaysia.*

**Keywords:** Masjid, legal issues, statutes, enactments, law.

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## 1.0 Introduction

The Federal Constitution provides that all matters related to Islamic law falls under List II of the 9th Schedule of the Constitution and respective states have power to legislate laws relating to those matters. This power is stated in article 74 (2) of the FC which provides to that effect that without prejudice to any power to make laws conferred on it by any other Article the legislature of a State may make laws with respect to any of the matters enumerated in the State List or the Concurrent List'. The State list, that is List II (1) of the Federal Constitution reads as follows:

Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including ..... mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal

List..... It is clear that by virtue of the provision, matters relating to administration and management of masjid in Malaysia fall under the purview of the State Legislature. It follows that each state has its own regulations and as a result, there are some differences between the State's Enactments.

## **2.0 Literature Review**

### **2.1 The legal history of Masjid in Malaysia**

Generally, the legal history of masjid in Malaysia must be read together with the history of introduction of Islamic law in Malaysia. Mohamad (2011) had summarised that the historical evolution of Islamic law in Malaysia took place roughly covers three periods. The first one is the colonial period (1900s-1950s), when plural statutes were formalized, while Islamic law was fused with other living laws such as Adat. Secondly, the postcolonial period (mid-1980 – early 2000s), when exclusive statutes for Muslims were rationalized to accommodate modernization. Thirdly, the current period (post-2000s) is characterized by the centralization of Islamic governance accompanied by the multiplication and differentiation of Syariah statutes.

Although there are difference views and arguments among scholars on the actual date of the introduction of Islamic law in Malaysia, the legal history of masjid in Malaysia can be traced back to the year 1885, when the British administration introduced a law called as Muhammadan to Pray in Masjids on Friday in Perak. The law provided for punishment against Muslims who did not perform their Friday prayer in masjid. (A. Aziz, 2007)

Section 3 of the Enactment stated:

“Any male person over the age of sixteen years residing within three miles of a Masjid presided over by a Priest of his own Muzahaf who, without reasonable excuse to be communicated to and allowed by the nearest Assistant Kathi or Trustee of the Masjid, shall fail to attend Prayers at such Masjid on every Friday or who after Saalam shall fail, except with the permission of the Kathi, to remain for at least one hour in the Masjid to hear the teaching of the Imam or Ulama shall be liable on conviction before the Court of a Penghulu to a fine not exceeding fifty cents for every such offence.

The Negeri Sembilan state legislature followed this step with the introduction of Masjid Attendance 1887 (Order of 9th August 1887, Sungei Ujung). The state of Kelantan introduced a law relating to masjid with the coming into force of the Masjid Enactment (Enactment No. 24 1938) in 1938 to govern the administration and management of masjid in the state.

The legislation relating to masjid in Selangor was introduced with the coming into force the Administration of Muslim Law Enactment, 1952 (Enactment No. 3 Of 1952). The relevant provisions were specifically provided under Part V with the heading Masjids from section 111 – 118. Section 111 provides that the State Religious Council is the trustee of masjid in Selangor, section 112 deals with restriction on establishment of new masjids in Selangor, section 113 provides for matters relating to repairs of masjids, section 114 provides for power of the State Religious Council to determine the boundaries of any kariah masjid and to amend or alter such boundaries. Section 114 – 118 deals specifically with appointment, removal, powers and duties of pegawai masjid. The 1952 Enactment was repealed by the Administration of Islamic Law Enactment 1989 (Enactment No. 2 of 1989 which was later repealed by the Administration of the Religion of Islam Enactment (Negeri Selangor) 2003 with effect from 1 September 2003.

In Federal Territories, the Administration of Islamic Law (Federal Territories) Act 1993 came into effect on 15 October 1993. The Act applies to the Federal Territories of Kuala Lumpur and Labuan only. The application of the Act was later extended to the Federal Territory of Putrajaya by virtue of the Federal Territory of Putrajaya (Extension And Modification of Administration of Islamic Law (Federal Territories) Act 1993) Order 2002 with effect from 1 February 2001. The Order further provides that the Administration of Islamic Law Enactment 1989 of Negeri Selangor (Enactment 2 of 1989) which was previously applicable has now ceased to apply to the Federal Territory of Putrajaya.

The current law governing the establishment and administration of masjid in the State of Kelantan is the Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994 which came into force on 1 August 1994. This Enactment had the effect of repealing the Kelantan Council of Religion and Malay Custom Enactment 1996 which had been in practice since 1 June 1966. The repealed law provided for matters relating to masjid under Part IV with the heading Mosques. Section 80 provides for that the State Religious Council shall be the trustee of all masjids in the State while section 81 explains the restriction on the establishment of new masjids. Section 83, 84 and 85 deal with repairs, closure or demolition and boundaries of mukim in which a masjid is located. Section 86 – 89 explain the requirement for keeping register of pegawai masjid, appointment and removal of pegawai masjid as well as their powers and duties.

In Sabah, the early legislation regulating masjid was provided under the Administration of Islamic Law Enactment 1992 which came into force on 1 January 1996. The matter was specifically dealt with under Part IV with the heading Mosques. Section 57 states that the State Religious Council shall be the trustee of all masjid in the State of Sabah, and every masjid together with the land on which it stands and any land which is appurtenant to and used for the purposes of the masjid, other than Government land or land reserved for public purpose. Section 58 provides for restriction on establishment of masjid in the State. Section 59 and 60 deal with maintenance of masjid and its compound as well as boundaries of the Kariah Masjid. Section 61, 62 and 63 provide for appointment, tenure of office of pegawai masjid, control and direction over pegawai masjid. Section 65 further states that the State Religious Council with the approval of the Yang di-Pertua Negeri has the power to appoint the jawatankuasa kariah who shall be responsible for the proper conduct and good order of the masjid and all Muslim burial grounds as kariah; in conjunction with the Pegawai Masjid appointed under the Enactment. This Enactment was repealed with the coming into force of the State Religious Council Ugama Islam Negeri Sabah Enactment 2004 (Enactment No. 5 of 2004) on 14 October 2004.

The Negeri Sembilan State Legislative Assembly passed the Administration of Islamic Law (Negeri Sembilan) Enactment 1991 (Enactment No. 1 of 1991) to provide for a law relating to the enforcement and administration of Islamic law, the constitution and organisation of the Syariah courts and to provide for related matters connected thereto in the State. The Enactment specifically dealt with matters relating to masjid under Part VI with the heading Mosques. Section 72 deals with trusteeship of masjids and related lands located in the State, section 73 deals with restriction on establishment of masjids, section 74 deals with maintenance of masjid and its compound while section 75 deals with boundaries of kariah masjid in the State. Section 76, 77 and 78 provide for provisions relating to appointment of pegawai masjid, their tenure of office, control and direction over pegawai masjid while section 80 empowers the State Religious Council to appoint Jawatankuasa Kariah that, in conjunction with the pegawai masjid, inter alia, shall be responsible for the proper conduct and good administration of the masjid and all Muslim burial grounds within its

kariah. This Enactment was repealed by the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 (Enactment No. 10 of 2003) with effect from 1 March 2004.

The other states in Malaysia have their own enactments to govern the establishment and administration of masjid in the respective states. The list of main legislations relating to masjid for the other 9 states in Malaysia is summarised in Table 1.

**Table 1: List of main legislations governing masjid in Malaysia.**

No	State	Enactment	Part/ Heading	Provision (Section)	Date of coming into force
1.	Johore	Administration of the Religion of Islam (State of Johor) Enactment 2003 (Enactment No. 16 Of 2003)	Part VII Mosques	96 – 105	1 April 2004
2.	Kedah	Administration of Islamic Law (Kedah Darul Aman) Enactment 2008 (Enactment No. 5 of 2008)	Part V Mosques	59 – 68	1 April 2008
3.	Malacca	Administration of the Religion of Islam (State of Malacca) Enactment 2002 (Enactment No. 7 of 2002)	Part VII Mosques	84 – 93	14 June 2003
4.	Pahang	Administration of Islamic Law Enactment 1991 (Enactment No. 3 of 1991)	Part VI Mosques	88 – 99	1 January 1992
5.	Penang	Administration of the Religion of Islam (State of Penang) Enactment 2004 (Enactment No. 2 of 2004)	Part VII Mosques	96 - 105	1 January 2006
6.	Perak	Administration of the Religion of Islam (Perak) Enactment 2004 (Enactment No. 4 Of 2004)	Part VII Mosques	85 – 94	1 June 2005
7.	Perlis	Administration of the Religion of Islam Enactment 2006 (Enactment No. 4 Of 2006)	Part VII Mosques	96 – 105	1 January 2010
8.	Sarawak	State Religious Council Islam Sarawak Ordinance 2001 (Chapter 41)	Part VI Establishment of Lembaga Hal- Ehwal Islam Dan Adat Melayu, Lembaga Masjid-Masjid, Etc.	57 – 64	1 December 2004
9.	Terengganu	Administration of Islamic	Part VI Mosques	80 – 89	1 August

		Religious Affairs (Terengganu) Enactment 1422H/2001M (Enactment No. 2 of 2001)			2002
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### 3.0 Methodology

Being a legal research, this paper made use of qualitative research methodology whereby content analysis and library-based research were primarily used.

### 4.0 Findings and Discussion

#### 4.1 State Enactments

##### 4.1.1 Selangor

The Administration of Islamic Law Enactment (Negeri Selangor) 2003 was enacted to make new provisions on the administration of the religion of Islam, the establishment and jurisdiction of the Syariah Courts, the establishment and functions of the State Religious Council Agama Islam Selangor, and other matters related to the abovementioned provisions. The provision governing the establishment and management of masjid is provided under Part VII of the Enactment with the heading Mosques. The content of Part VII is summarised in Table 2.

No.	Section	Provision
1	96	State Religious Council to be sole trustee of mosques and related lands
2	97	Restriction on establishment of mosques and penalty
3	98	Establishment of mosques
4	99	Maintenance of mosques and their compounds
5	100	Appointment of pegawai masjid
6	101	Tauliah of pegawai masjid
7	102	Tenure of office of pegawai masjid
8	103	Control and direction of pegawai masjid
9	104	Jawatankuasa Kariah and Jawatankuasa Pengurusan Masjid
10	105	Exemption of mosques

Section 97 deals with restriction on establishment of masjids in Selangor by stating that no person is allowed erect any building to be used or use or cause to be used any building for purposes which may only be carried on in or by a masjid except with the permission in writing from the State Religious Council. Any contravention of the provision shall make the person guilty of an offence and shall on conviction be liable to fine not exceeding three thousand ringgit or to imprisonment for term not exceeding one year or to both.

Section 98 further provides that the State Religious Council has power to permit a building to be erected for use as a masjid, to allow the use of any building as a masjid or to prescribe any surau, madrasah or other building to be used as a masjid on condition that the site of the building has been made a wakaf in perpetuity.

##### 4.1.2 Federal Territories

The law governing the establishment of and administration of masjid in the Federal Territories is contained in the Administration of Islamic Law (Federal Territories) Act 1993. Section 2 of the Act

defines “mosque” to mean a building used for holding Friday and other prayers and activities enjoined, recommended, or approved by the religion of Islam, and includes any mosque or surau or madrasah listed in the Third Schedule;

The provision relating to masjid is provided under Part VII of the Act with the heading Mosques. The content of Part VII is summarised in Table 3.

No.	Section	Provision
1	72	Trusteeship of mosques and related lands
2	73	Restriction on establishment of mosques
3	74	Maintenance of mosques and compunds
4	75	Boundaries of kariah masjid
5	76	Appointment of the pagawai masjid
6	77	Tauliah
7	78	Tenure of office of pegawai masjid
8	79	Control and direction over pagawai masjid
9	80	Abolition of office of Nazir
10	81	The Jawatankuasa Kariah
11	82	Exemption
12	83	Power to amend Third Schedule

Section 73 states that no person is permitted erect any building to be used as a masjid, or otherwise apply any building for the purposes of a masjid, or cause or permit any building to be used as a masjid in any part of the Federal Territories without permission in writing of the State Religious Council and the permission is subject to the requirement that the site of the building for the proposed masjid has been made a wakaf in perpetuity. It must also be noted the the provisions of the Act are not applicable to the Masjid Negara by virtue of section 82.

#### 4.1.3 Negeri Sembilan

The legislation in force in Negeri Sembilan is the Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 (Enactment No. 10 of 2003) which came into effect on 1 March 2004. The Enactment was passed to make new provisions on the administration of the religion of Islam, the establishment and jurisdiction of the Syariah Courts, the establishment and functions of the State Religious Council of Negeri Sembilan, and other matters related thereto which includes the establishment and administration of masjid in the State.

Section 2 defines ‘mosque’ as a building used for Friday prayers and other prayers and activities which are enjoined, recommended, or approved by the religion of Islam; and the use of which as such is permitted by the State Religious Council under section 98 which provides inter alia that the State Religious Council may at any time permit a building to be erected for use as a masjid; permit the use of any building as a masjid; or prescribe any surau, madrasah or other building to be a masjid on strict condition that the site of the building to be used as a masjid has been made a wakaf in perpetuity.

The provision relating to masjid is provided under Part VII of the Enactment with the heading Mosques. The content of Part VII is summarised in Table 4.

No.	Section	Provision
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1	96	State Religious Council to be sole trustee of mosques and related land
2	97	Restriction on establishment of mosques and penalty
3	98	Establishment of mosques
4	99	Maintenance of mosques and their compounds
5	100	Appointment of Pegawai Masjid
6	101	Tauliah of Pegawai Masjid
7	102	Tenure of office of Pegawai Masjid
8	103	Control and direction of Pegawai Masjid
9	104	Jawatankuasa Kariah
10	105	Exemption of mosques

Section 97 provides that no person shall be allowed to erect any building to be used or use or cause to be used any building for purposes which may only be carried on in or by a masjid except with written permission from State Religious Council and in contravention of this provision, that person shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

#### 4.1.4 Sabah

The law governing matters related to the establishment and administration of masjid in Sabah is regulated by the Majlis Ugama Islam Negeri Sabah Enactment 2004 (Enactment No. 5 of 2004) which came into effect on 14 October 2004. Section 2 of the Act interprets "mosque" as a building used for Friday prayers and other prayers and activities which are enjoined, required, recommended, or approved by religion of Islam; and the use of which as such is permitted by the State Religious Council under section 60, and includes any surau, madrasah or other building declared by the State Religious Council as a masjid.

The provision relating to masjid is provided under Part IV of the Enactment with the heading Mosques. The content of Part IV is summarised in Table 5.

No.	Section	Provision
1	58	State Religious Council to be sole trustee of mosques and related land.
2	59	Restriction on establishment of mosques
3	60	Establishment of mosques
4	61	Maintenance of mosques and their compounds
5	62	Appointment of Pegawai Masjid.
6	63	Tauliah of Pegawai Masjid
7	64	Tenure of office of Pegawai Masjid
8	65	Control and direction of Pegawai Masjid
9	66	Jawatankuasa Kariah
10	67	Exemption of mosques

Section 59 states to the effect that no person shall, without the permission in writing of the State Religious Council, erect any building to be used or use or cause to be used any building for purposes which may only be carried on in or by a masjid in the State. Section 60 further provides that the State Religious Council has power to permit a building to be erected for use as a masjid; permit the use of any building as a masjid; or prescribe any surau, madrasah or other building to be a masjid with the same condition imposed by the enactments governing same matter applicable in other

states mentioned earlier that the permission or prescription shall only be given if the site of the building to be used as a masjid has been made a wakaf in perpetuity.

#### 4.1.5 Kelantan

The Council of the Religion of Islam and Malay Custom, Kelantan Enactment 1994 which came into force on 1 August 1994 was passed to provide for the constitution of the Council of the Religion of Islam and Malay Custom, Kelantan to assist His Royal Highness the Sultan in matters relating to the Religion of Islam and Malay Custom in the State of Kelantan which includes masjid. The provision relating to masjid is provided under Part IV of the Enactment with the heading Mosques. The content of Part IV is summarised in Table 6.

No.	Section	Provision
1	80	State Religious Council to be trustee of mosques
2	81	Restriction on building of mosques
3	82	Holding Jumaat prayer with permission
4	83	Repair and supervision of mosques
5	84	Closure and demolition of mosques
6	85	Boundaries of mukim mosque
7	86	Register of pegawai masjid
8	87	Appointment of pegawai masjid.
9	88	Removal of pegawai masjid.
10	89	Powers and duties of pegawai masjid
11	90	Attendance at Jumaat prayers.

The provision which restricts the erection of any building to be used as a masjid except with the permission in writing of the State Religious Council is stated in section 81. The provision also requires that the permission is subject to the condition that the proposed masjid has been made a wakaf in perpetuity.

Section 103 makes it an offence for any person who erects a masjid for praying the Jumaat prayer or dedicates or in any other way uses any building for the purpose of or as a masjid for praying the Jumaat prayer without the written authority of the State Religious Council and that person shall, on conviction be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding two years or to both and the Court may order that the building be demolished subject to the rights of third parties affected by the order.

## 4.2 Current Legal Issues Concerning Masjid

### 4.2.1 Waqf Issues relating to masjid

Syed A. Kadir (2009) summarised that waqf comprises various kinds of assets, including masjids, suraus, religious schools, etc; land for commercial or agricultural purposes; land for masjids, suraus, religious schools, cemeteries and orphanages; funds for the maintenance and upkeep of masjids, suraus, religious schools, etc; and commercial and residential buildings.

Section 2 of the Administration of Islamic Law Enactment (Negeri Selangor) 2003 states that “wakaf” means any property from which its benefit or interest may be enjoyed for any charitable purpose whether as wakaf am or wakaf khas in accordance with Hukum Syarak, but does not include a trust which is defined under the Trustee Act 1949.

Some states in Malaysia have taken steps made a commitment to introduce law to specifically deal with waqf for instance Selangor, Negeri Sembilan and Malacca. Nevertheless the provisions are inadequate. The Waqaf (State of Selangor) Enactment 1999 was passed to provide for the implementing procedures for registration and supervision of waqf property, emphasizing the necessity of registration of waqf properties in Selangor in the name of the Selangor Islamic Religious Council as the sole trustee of waqf properties in Selangor as provided under section 32 of the Enactment. (Mohamad, 2012). Section 2 of the Wakaf (State of Selangor) Enactment 1999 defines "wakaf" as the dedication of any property from which its usufruct or benefit may be used for any charitable purpose whether as wakaf am or wakaf khas according to Hukum Syarak, but does not include a trust which is defined under Trustee Act 1949.

This provision is relevant in this discussion by making reference to section 98 of the Administration of Islamic Law Enactment 2003 (Negeri Selangor) which puts a condition that any building intended to be erected for use as a masjid or any surau, madrasah or other building to be prescribed as masjid, the State Religious Council requires that the site of the building must have been made a wakaf in perpetuity. Another relevant point here is with reference to the fatwa issued by the Selangor State Fatwa Council which, decided that the state government may create waqf over its property for the specific use of Muslims including the site of a masjid, prayer room and Islamic school".

The law relating to land in Malaysia is subject to the National Land Code with exception to Sabah and Sarawak. Section 4 (2) of the National Land Code states that the provision of the Code are not applicable in respect of waqf lands except if otherwise provided by the law. Section 5 of the National Land Code clearly provides that the word 'trust' does not include a waqf created in accordance with the principles of Muslim law.

The lack of procedures relating to the registration of waqf lands does not mean that registration of waqf lands is not required. We have seen in some instances where many waqf properties being unregistered and even if registered, the beneficiary and the waqf trustee consists of many different parties. Mohamad (2012) submitted that registration of waqf lands should be a necessary requirement in order to guarantee its sustainable management in times to come. Clear provisions relating to the requirement of registration and the updating of records in line with the wide utilization of the computerized system presently should be added into the laws relating to waqf lands in Malaysia. The legislature should also consider the inclusion of provision to enable identification of the registered owner as well as the role and powers of the waqf trustee or administrator.

The present loopholes in the National Land Code in dealing with waqf can also be improved with the inclusion of the State Religious Council as the person entitled to deal with waqf land including masjid under section 43 of the Code. This is to avoid any issues in the future involving the affected properties.

#### **4.2.2 Legal entity of masjid**

Hassan (2012) made reference to Taqi Usmani (2006) with arguments that the existence of the principle of separate legal entity under Islamic law is based on precedents of other Islamic institutions and practice like waqf, masjids dan baitulmal. After being declared as waqf property, the donor is no longer the owner of the property. In case of a masjid, when any donation given to the masjid it belongs to the masjid and does not become part of waqf.

Reference to the State Enactments in Malaysia found that there is no provision in any of the Enactments which specifically provides to the effect that masjid shall have its own legal identity in the eyes of Malaysian law. Issue arise whether a masjid is capable of suing and being sued in its own name in any court in Malaysia? Without any specific provision it is not right to answer in affirmative. It is noted that there are provisions in the State Enactments which provides for the legal identity of the State Religious Council. For instance section 5 of the Administration of Islamic Law Enactment (Negeri Selangor) 2003 states to the effect that the State Religious Council shall be a body corporate having perpetual succession with a common seal, may sue and be sued by its own corporate name. The Council may enter into contracts and may acquire, purchase, take, hold, and enjoy movable and immovable property of every description and to deal with the property subject to any written law as the Council deems fit in accordance with Hukum Syarak. The provision further states that the Council shall have further powers and carry out such duties as may be assigned to it by this Enactment or by any other Enactment and it is submitted that it includes being the sole trustee of all masjids in the State. Upon this premise it is further submitted that all actions and undertakings by a masjid must be done through the Council as the sole trustee.

#### **4.2.3 State Islamic Religious Council as sole trustee of all masjid in the state**

As clearly stated in Table 3, Table 4, Table 5 and Table 6, all six Enactment mentioned earlier provide for the provision to the effect that the State Religious Council is the sole trustee of all masjids in the respective states. That means that all masjids together with the land on which it stands and used for the purposes of the masjid, other than Government land or land reserved for a public purpose, shall, upon registration under the relevant written laws relating to land i.e. National Land Code in Peninsular Malaysia and Sabah Land Ordinance , and without any conveyance, assignment, or transfer, vest in the respective State Islamic Religious Council as required by the legislation.

Issue arises as to whether the State Religious Council is the right body to perform the functions of the trustee to administer all masjids in the respective states. Besides the administration of masjid, the Council is occupied with many other religious issues such as the management of waqf properties, Baitulmal, zakat, nazar and trusts and etc. It is submitted that the appointment of the State Religious Council as the sole trustee of all masjid has not contributed to the efficient and succesful management of masjids in the country.

#### **5.0 Conclusion**

Eventhough Malaysia has 14 different Enactments governing the establishment and administration of masjid in 14 states, the provisions are quite similar to each other without any obvious differences. Further reseach should be conducted to examine the legal issues in details and provide workable solution to the policymaker. Feedbacks from stakeholders are essential to ensure smooth implimentation of the law.

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