

An Innovative Operational Framework for an Independent Intangible Cultural Heritage Commission in Malaysia

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ABSTRACT

The governance of intangible cultural heritage (ICH) in Malaysia remains structurally constrained by fragmented federal–state jurisdiction, legal pluralism, and the limited authority of existing heritage institutions under the National Heritage Act 2005 (Act 645). Although Malaysia possesses a rich and diverse cultural heritage, current governance mechanisms remain largely advisory in nature and lack the institutional autonomy and enforceable authority necessary to address complex disputes involving federal agencies, state religious authorities, indigenous customary systems, and local communities. This study proposes an innovative operational framework for establishing an Independent Intangible Cultural Heritage Commission (IICHC) in Malaysia, a legally empowered, participatory governance institution capable of addressing these longstanding structural deficiencies. Employing a hybrid qualitative methodology integrating doctrinal legal analysis, legal pluralism theory, comparative institutional evaluation, and case-based analysis, the study examines constitutional, statutory, and governance challenges within Malaysia’s existing heritage framework. Comparative insights are drawn from Indonesia, the Philippines, and Japan to identify institutional practices relevant to plural legal environments and decentralised governance systems. The findings reveal that effective safeguarding of ICH requires more than administrative preservation measures; it necessitates an autonomous institutional mechanism capable of mediating competing normative systems, harmonising federal and state policies, and empowering heritage communities through participatory governance. The proposed Commission is therefore conceptualised as a statutory body or quasi-judicial tribunal anchored upon three interrelated mandates: dispute resolution and mediation, policy harmonisation and coordination, and community empowerment and participation. The framework contributes to contemporary scholarship on heritage governance, legal pluralism, and institutional reform by demonstrating how inclusive and legally coordinated governance mechanisms may strengthen cultural safeguarding within plural constitutional systems. Furthermore, the proposed model advances Sustainable Development Goal (SDG) 16 concerning peace, justice, and strong institutions, while supporting SDG 8 through sustainable cultural tourism, creative industries, and community-based economic development.

Keywords: Intangible cultural heritage governance, legal pluralism, institutional reform, participatory governance, sustainable heritage governance

INTRODUCTION

The safeguarding of Malaysia’s intangible cultural heritage (ICH) extends beyond cultural preservation and reflects a deeper institutional and constitutional challenge rooted in the country’s legally plural and federal governance structure. Intangible cultural heritage—including oral traditions, performing arts, rituals, customary practices, and traditional knowledge—constitutes an essential component of national identity, social cohesion, and community continuity. However, despite the enactment of the National Heritage Act 2005 (Act 645), the

governance of ICH in Malaysia remains fragmented, politically constrained, and institutionally weak due to overlapping federal–state jurisdictions and the coexistence of civil, Islamic, and customary legal systems.

This governance fragmentation is particularly significant because heritage preservation falls within the Concurrent List of the Ninth Schedule of the Federal Constitution, allowing both federal and state governments to legislate on cultural matters. In practice, this constitutional arrangement has generated persistent jurisdictional tensions, especially in cases involving state religious authorities, Indigenous customary systems (adat), and federal heritage protection policies. Harding (2022) observes that Malaysia’s federal constitutionalism often creates ambiguities in administrative authority at the intersection of cultural and religious governance, thereby complicating the implementation of cohesive national policies. These tensions are further intensified by the absence of an autonomous institutional mechanism to mediate disputes and harmonise competing legal and political interests.

The inadequacy of the existing governance structure is evident in several heritage-related controversies, most notably the Mak Yong ban in Kelantan, where conflicts between federal cultural recognition and state-level religious regulation exposed the limitations of advisory-based governance. Existing heritage institutions under Act 645 remain largely administrative and consultative, lacking the legal authority, neutrality, and enforcement powers necessary to resolve complex federal–state and community–state disputes effectively. Recent scholarship increasingly recognises that the failure of heritage governance in legally plural societies is not merely administrative but structural, arising from institutional designs that cannot accommodate multiple normative orders within a coherent governance framework (Tobin, 2022; Von Benda-Beckmann & Turner, 2021).

Contemporary international discourse on ICH governance has similarly shifted toward participatory, rights-based, and community-centred approaches that emphasise institutional autonomy, inclusivity, and sustainable governance. Blake (2022) argues that effective safeguarding of ICH requires governance systems that directly empower heritage custodians through participatory institutional structures, rather than relying solely on state-centric regulatory approaches. Likewise, UNESCO’s Overall Results Framework for the Convention for the Safeguarding of the Intangible Cultural Heritage (2023) stresses the importance of inclusive governance, legal coordination, and community participation as central indicators of effective safeguarding. These developments reflect a broader global transition from preservation-oriented governance toward collaborative and rights-based heritage management frameworks aligned with the Sustainable Development Goals (SDGs), particularly SDG 16 (Peace, Justice and Strong Institutions) and SDG 8 (Decent Work and Economic Growth).

Within Southeast Asia, comparative experiences further demonstrate the importance of autonomous and multi-stakeholder institutional mechanisms in managing legal pluralism and decentralised cultural governance. The Philippines’ Indigenous Peoples’ Rights Act illustrates how rights-based institutional frameworks can facilitate community participation and legal protection for Indigenous cultural practices, while Indonesia’s decentralised heritage governance model demonstrates the importance of policy coordination between national and regional authorities. Japan’s Cultural Properties framework additionally highlights the significance of institutional continuity, technical expertise, and financial sustainability in safeguarding cultural heritage over the long term. Collectively, these comparative models reveal that institutional independence and legally enforceable authority are critical for ensuring legitimacy, consistency, and effective dispute resolution within plural legal environments.

Against this backdrop, this paper proposes an innovative operational framework to establish an Independent Intangible Cultural Heritage (ICH) Commission in Malaysia. Conceptualised as an autonomous statutory body or quasi-judicial tribunal, the proposed Commission seeks to address the longstanding institutional vacuum in Malaysian heritage governance by introducing an enforceable, participatory, and legally coherent mechanism to protect ICH. The framework is anchored upon three interrelated pillars: (i) dispute resolution and mediation; (ii) policy harmonisation and coordination; and (iii) community empowerment and participation. Unlike existing advisory institutions, the proposed Commission is designed to exercise binding legal authority, provide judicial oversight, and facilitate structured negotiation among federal agencies, state authorities, indigenous communities, cultural practitioners, and other stakeholders.

This paper, therefore, moves beyond descriptive critique toward a solution-oriented institutional reform model grounded in legal pluralism, participatory governance, and sustainable development principles. By integrating doctrinal legal analysis with comparative regional and international perspectives, the study demonstrates how an independent, multi-stakeholder institutional framework can overcome persistent political, jurisdictional, and administrative constraints in Malaysia's ICH governance system. Ultimately, the proposed Commission aspires not only to strengthen the rule of law and institutional accountability in line with SDG 16, but also to unlock the broader socio-economic and cultural potential of heritage resources consistent with SDG 8.

LITERATURE REVIEW

The contemporary literature on the governance of intangible cultural heritage (ICH) increasingly recognises that effective safeguarding requires more than preservation-oriented administrative mechanisms; it necessitates institutional structures capable of managing legal pluralism, competing normative systems, and multi-level governance complexities. Within the Malaysian context, existing scholarship consistently demonstrates that the current framework under the National Heritage Act 2005 (Act 645) suffers from structural weaknesses arising from fragmented jurisdictional authority, limited institutional autonomy, and the absence of legally enforceable dispute-resolution mechanisms (Mustafa & Abdullah, 2022; Mustafa, 2025). These deficiencies are particularly evident in conflicts involving state religious authorities, indigenous customary systems, and federal heritage policies, where existing heritage bodies function largely as advisory institutions without sufficient legal authority to mediate or enforce decisions effectively.

Recent scholarship further argues that heritage governance failures in legally plural societies are fundamentally institutional rather than merely administrative. Tobin (2022) emphasises that heritage governance within plural legal systems requires institutional frameworks that can accommodate indigenous customary law, community-based normative systems, and state law simultaneously, rather than subordinating one system to another. Similarly, Von Benda-Beckmann and Turner (2021) contend that legal pluralism should not be viewed as a governance obstacle but rather as a structural reality that necessitates inclusive and negotiated institutional arrangements. In Malaysia, this challenge is intensified by the constitutional division of powers under the Concurrent List of the Ninth Schedule, which creates overlapping federal–state authority over cultural matters and often generates regulatory inconsistency and political deadlock (Harding, 2022).

Existing Malaysian scholarship strongly supports the argument that the current governance model lacks the essential institutional characteristics necessary for effective ICH protection, namely autonomy, neutrality, enforceability, and participatory legitimacy (Mustafa & Abdullah, 2022; Mustafa, 2023; Mustafa, 2024). Empirical analyses of disputes such as the Mak Yong ban in Kelantan reveal how state-level religious governance may override federal cultural recognition in the absence of a neutral adjudicative mechanism to reconcile competing legal and political interests (Mustafa, 2025). Consequently, the literature increasingly advocates structural reform by establishing an independent statutory institution with tribunal-like authority that can operate beyond conventional bureaucratic constraints.

The broader international literature similarly reflects a shift toward participatory, rights-based, and community-centred heritage governance models. Blake (2022) argues that sustainable safeguarding of ICH requires governance systems that directly empower heritage custodians through meaningful participation in institutional decision-making processes. This perspective aligns with UNESCO's Overall Results Framework for the Convention for the Safeguarding of the Intangible Cultural Heritage (2023), which identifies community participation, legal coordination, institutional accountability, and inclusive governance as central indicators of effective safeguarding. Bortolotto (2023) further notes that contemporary ICH governance increasingly intersects with sustainable development discourse, where heritage protection is linked not only to cultural preservation but also to social inclusion, community resilience, and sustainable economic development.

Comparative scholarship further strengthens the rationale for establishing an independent and multi-stakeholder ICH Commission in Malaysia. Studies of Indonesia's decentralised cultural governance system and the Philippines' Indigenous Peoples' Rights Act demonstrate how legally plural societies may operationalise institutional coordination and community representation within heritage governance structures (Anaya, 2023). The Philippine framework, in particular, illustrates how rights-based institutional arrangements can provide

Indigenous communities with direct legal standing and participatory authority in matters involving cultural protection and customary practices. Meanwhile, Indonesia's decentralised governance approach demonstrates the importance of policy harmonisation mechanisms that balance regional autonomy with national cultural objectives.

Beyond Southeast Asia, Japan's Cultural Properties framework is frequently cited as an example of long-term institutional stability and effective state-supported heritage governance. Logan, Craith, and Kockel (2022) observe that institutional continuity, specialised technical expertise, and dedicated financial mechanisms are critical factors contributing to successful cultural governance systems. Similarly, Labadi (2021) argues that heritage institutions increasingly play a strategic role in achieving the Sustainable Development Goals (SDGs), particularly through governance reform, inclusive participation, and sustainable cultural tourism initiatives. These international models collectively demonstrate that institutional independence, enforceable authority, and stakeholder inclusivity are essential prerequisites for effective heritage governance within complex socio-legal environments.

Within governance and institutional reform literature, the limitations of advisory institutions are also extensively documented. Grindle (2004) argues that institutional effectiveness in developing contexts depends not merely on formal structures but on "good enough governance," in which institutions possess sufficient authority and operational capacity to meaningfully influence stakeholder behaviour. Similarly, Andrews (2013) critiques reform initiatives that create "islands of excellence" without broader enforcement capability or systemic authority, resulting in institutions that are symbolically significant but operationally ineffective. These critiques resonate strongly with the Malaysian heritage governance experience, where existing institutions often lack the legal mandate to ensure compliance or resolve disputes effectively.

The literature additionally highlights the relationship between heritage governance, community participation, and social legitimacy. Crooke (2022) emphasises that communities must not be treated as passive beneficiaries of heritage protection, but rather as active participants in governance whose lived experiences and customary knowledge contribute directly to safeguarding processes. This perspective is especially relevant within the Malaysian context, where Orang Asli communities and traditional cultural practitioners frequently encounter exclusion from formal legal and administrative mechanisms. Community-centred governance models, therefore, provide an important theoretical foundation for the proposed Commission's mandate on empowerment and participation.

Moreover, recent scholarship on heritage governance increasingly connects institutional reform with broader sustainable development objectives. Bortolotto (2023) and Labadi (2021) argue that heritage institutions contribute significantly to SDG implementation through cultural tourism, creative industries, community entrepreneurship, and social cohesion. Effective governance frameworks are therefore not only essential for cultural preservation but also for unlocking the socio-economic potential of heritage resources in a sustainable and equitable manner. This perspective reinforces the importance of establishing institutional mechanisms that combine legal authority, policy coordination, and community participation within a coherent governance framework.

Overall, the academic literature consistently demonstrates that the ICH governance crisis in Malaysia is not simply a bureaucratic inefficiency, but a structural institutional failure rooted in fragmented federalism, legal pluralism, and insufficient institutional autonomy. Existing heritage governance mechanisms under the National Heritage Act 2005 remain constrained by their advisory nature, political dependence, and inability to effectively reconcile competing normative orders (Mustafa & Abdullah, 2022; Mustafa, 2025). Comparative and international scholarship further indicates that successful heritage governance requires autonomous, participatory, and legally enforceable institutions capable of integrating state, religious, customary, and community interests within a unified framework (Blake, 2022; Tobin, 2022; UNESCO, 2023). Accordingly, the proposed Independent Intangible Cultural Heritage Commission represents not only a logical institutional reform but also a necessary structural transformation to address longstanding governance fragmentation and strengthen the protection of Malaysia's intangible cultural heritage.

METHODOLOGY

This study adopts a qualitative and interdisciplinary legal research methodology grounded primarily in doctrinal legal analysis, complemented by comparative institutional evaluation, case-based analysis, and governance-oriented inquiry. The methodological framework is designed to address the complex and multi-layered nature of intangible cultural heritage (ICH) governance in Malaysia, particularly within the context of legal pluralism, federalism, and overlapping institutional authority. Given that the study proposes an innovative institutional reform model rather than merely describing existing legal provisions, a multi-dimensional methodological approach is necessary to evaluate both the normative and operational dimensions of heritage governance.

The primary methodological approach employed is doctrinal legal research, which involves the systematic examination, interpretation, and critical analysis of primary legal materials, including the Federal Constitution, the National Heritage Act 2005 (Act 645), relevant state enactments, policy instruments, and judicial decisions. This doctrinal analysis enables the study to identify structural inconsistencies, jurisdictional ambiguities, and normative conflicts within Malaysia's existing heritage governance framework. Particular attention is given to the constitutional allocation of powers under the Concurrent List of the Ninth Schedule, which creates overlapping federal–state jurisdiction over cultural matters and contributes significantly to governance fragmentation. By analysing statutory provisions alongside constitutional principles, the study evaluates the adequacy of existing legal mechanisms in safeguarding ICH within a legally plural environment.

However, doctrinal analysis alone is insufficient for examining governance systems shaped by competing normative orders and decentralised institutional arrangements. Consequently, the study incorporates a legal pluralism framework to examine the interaction among civil law, Islamic law, and Indigenous customary systems (*adat*) in the governance of cultural heritage. Consistent with contemporary scholarship on legal pluralism and heritage governance (Tobin, 2022; Von Benda-Beckmann & Turner, 2021), this approach recognises that effective safeguarding requires institutional mechanisms capable of negotiating and harmonising multiple coexisting legal and cultural systems rather than privileging a singular state-centric legal order. The integration of legal pluralism theory therefore enables the study to evaluate the extent to which existing governance structures accommodate diverse normative interests and to justify the need for an independent mediating institution.

In addition to doctrinal inquiry, the research adopts a problem–solution analytical framework that moves beyond descriptive legal critique toward solution-oriented institutional reform. Under this framework, deficiencies within the current governance system are first systematically identified before being addressed through the formulation of a proposed Independent Intangible Cultural Heritage Commission. This approach is informed by governance and institutional reform scholarship, particularly studies emphasising the importance of context-sensitive institutional design, enforceability, and participatory governance mechanisms in legally complex societies (Grindle, 2004; Pierre & Peters, 2021). The methodological emphasis is therefore purposive and reform-oriented, aiming not only to diagnose institutional weaknesses but also to develop a practically viable and legally coherent governance model to address those deficiencies.

The study further employs case-based legal analysis to examine how legal principles and institutional structures operate in practice. This method enables the research to move beyond abstract statutory interpretation by evaluating the real-world implications of fragmented governance and political constraints. Key judicial decisions and heritage-related controversies are analysed as empirical illustrations of institutional inadequacies within the Malaysian context. In particular, *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002] is examined as a landmark case concerning Indigenous customary rights and the state's recognition of non-state legal systems, while the Mak Yong controversy is analysed as a paradigmatic example of unresolved tensions between federal heritage protection and state-level religious governance. These cases provide empirical grounding for the study's central analytical themes, namely institutional fragmentation, legal pluralism, and the absence of effective dispute-resolution mechanisms.

To strengthen the analytical framework, the research also incorporates a comparative legal and institutional methodology involving selected jurisdictions within Southeast Asia, namely Indonesia and the Philippines, as well as institutional benchmarking against Japan's cultural governance framework. These jurisdictions are

selected based on their comparable engagement with decentralised governance systems, legal pluralism, and community-centred heritage protection. The Philippines' Indigenous Peoples' Rights Act is particularly relevant for understanding rights-based approaches to community participation, legal empowerment, and Indigenous representation within governance institutions (Anaya, 2023). Indonesia's decentralised cultural governance model provides useful insights into policy coordination and harmonisation between central and regional authorities within a plural legal environment. These comparative examples are utilised not for direct legal transplantation but for identifying institutional principles and governance practices adaptable to the Malaysian context.

The benchmarking analysis involving Japan's Cultural Properties framework serves a complementary institutional function. Although Japan operates within a different constitutional and socio-political setting, its heritage governance model offers valuable lessons concerning institutional continuity, specialised expertise, administrative coordination, and financial sustainability. Contemporary heritage governance scholarship highlights that institutional effectiveness depends not only on legal authority but also on stable funding mechanisms, technical capacity, and long-term governance continuity (Logan, Craith, & Kockel, 2022). Accordingly, insights derived from the Japanese framework inform the study's recommendations concerning the operationalisation, financial autonomy, and structural resilience of the proposed Commission.

In line with recent scholarship linking cultural governance with sustainable development, the study additionally incorporates a governance-oriented analytical perspective informed by the Sustainable Development Goals (SDGs), particularly SDG 16 (Peace, Justice and Strong Institutions) and SDG 8 (Decent Work and Economic Growth). Contemporary heritage governance literature increasingly recognises that effective safeguarding mechanisms contribute not only to cultural preservation but also to institutional accountability, community empowerment, sustainable tourism, and socio-economic development (Labadi, 2021; Bortolotto, 2023). The inclusion of SDG-oriented governance analysis, therefore, enables the study to evaluate the broader institutional and developmental implications of the proposed Commission beyond its legal and administrative functions.

Overall, the study adopts a hybrid methodological framework integrating doctrinal legal analysis, legal pluralism theory, comparative institutional analysis, case-based evaluation, governance-oriented inquiry, and institutional benchmarking. This interdisciplinary approach ensures that the proposed Independent Intangible Cultural Heritage Commission is not merely theoretically grounded but also contextually relevant, institutionally feasible, and aligned with contemporary developments in heritage governance scholarship. By combining normative legal analysis with comparative and governance perspectives, the methodology provides a comprehensive foundation for evaluating structural reform within Malaysia's complex legal and institutional landscape.

FINDINGS AND RECOMMENDATIONS

ICHC as a Statutory Institution or Tribunal

The proposed operational framework for the Independent Intangible Cultural Heritage Commission (IICHC) is designed to address three interrelated structural deficiencies in Malaysia's existing heritage governance system: legal fragmentation, institutional weakness, and political constraint. Central to this framework is the recommendation that the Commission be formally established as an independent statutory institution or quasi-judicial tribunal endowed with legally enforceable authority. This institutional transformation represents a significant departure from the current advisory-based governance structure under the National Heritage Act 2005 (Act 645), which has consistently demonstrated limited effectiveness in resolving complex jurisdictional and normative conflicts involving federal, state, religious, and community actors.

Contemporary governance scholarship increasingly recognises that advisory institutions operating without binding authority are frequently ineffective within legally and politically complex environments. Grindle (2004) argues that institutional effectiveness in developing governance systems depends not merely on formal institutional existence but on possessing sufficient operational authority and enforcement capability to influence stakeholder behaviour meaningfully. Similarly, Andrews (2013) criticises institutional reforms that create symbolic entities lacking substantive enforcement powers, describing such institutions as "islands of excellence" that remain structurally disconnected from broader governance systems and incapable of producing systemic

change. Within the Malaysian heritage context, existing heritage bodies exhibit many of these limitations, functioning largely as consultative agencies without the legal mandate to compel compliance, mediate constitutional tensions, or adjudicate disputes involving competing legal and political interests.

The limitations of advisory governance are particularly problematic within Malaysia's legally plural constitutional framework, where heritage governance intersects with overlapping civil, Islamic, and customary legal systems. Harding (2022) notes that Malaysia's federal constitutional arrangement frequently produces ambiguities in administrative authority, particularly where matters involving culture, religion, and state autonomy intersect. Consequently, heritage-related disputes often remain unresolved due to the absence of an independent institutional mechanism capable of reconciling competing normative orders through authoritative legal interpretation and structured dispute resolution. The Mak Yong controversy in Kelantan remains one of the clearest illustrations of this institutional deficiency, where federal recognition of intangible cultural heritage conflicted directly with state-level religious governance, resulting in prolonged regulatory inconsistency and governance paralysis (Mustafa, 2025).

In this context, the establishment of the ICHC as a statutory body or quasi-judicial tribunal is not merely an administrative enhancement but a structural institutional necessity. By conferring tribunal-like powers upon the Commission through amendments to the National Heritage Act 2005, the proposed framework seeks to transform the Commission from a purely advisory entity into an authoritative governance institution capable of issuing legally binding decisions, exercising adjudicative oversight, and facilitating enforceable dispute resolution. Such institutional authority is essential for managing federal–state tensions and community–state disputes within a legally plural governance environment. Tobin (2022) argues that effective governance within plural legal systems requires institutional mechanisms capable of mediating among competing normative systems rather than privileging singular state-centric legal authority. The proposed Commission operationalises this principle by functioning as a neutral adjudicative body that integrates federal legal obligations, state interests, religious considerations, and customary community rights within a coherent institutional framework.

The proposed institutional upgrade also directly addresses longstanding political constraints that have historically undermined governance of Malaysian heritage. Existing advisory institutions remain vulnerable to political interference because their recommendations are non-binding and dependent upon executive discretion for implementation. This structural weakness is similarly reflected in the operational experience of the Human Rights Commission of Malaysia (SUHAKAM), whose inquiries and recommendations—despite carrying substantial moral and constitutional significance—have frequently lacked enforceability and practical implementation due to the absence of binding legal authority (Hilley, 2001). The recurring inability of advisory bodies to secure compliance demonstrates the broader institutional limitations of governance structures that rely solely on persuasion and administrative coordination and lack adjudicative power.

In contrast, vesting the proposed Commission with enforceable legal authority would enable it to function as an independent and credible arbiter, ensuring compliance across federal and state jurisdictions. Judicial or quasi-judicial authority would enable the Commission to issue binding determinations in disputes over heritage recognition, cultural rights, and conflicts involving state-level restrictions on protected cultural practices. Such authority would also facilitate consistent constitutional interpretation regarding the relationship between federal heritage obligations and state-level regulatory powers, thereby reducing uncertainty and jurisdictional inconsistency within the heritage governance framework.

Beyond dispute resolution, the Commission's statutory status is equally critical to facilitating coherent policy harmonisation and long-term institutional stability. Contemporary heritage governance literature increasingly emphasises that institutional continuity, specialised expertise, and legal autonomy constitute essential components of effective safeguarding systems (Logan, Craith, & Kockel, 2022). Without a legally empowered institutional structure, policy coordination efforts remain vulnerable to political fragmentation and administrative inconsistency. Accordingly, the proposed Commission would provide the institutional foundation necessary to implement harmonised governance instruments, such as the proposed Model State Heritage Law, while ensuring that heritage protection measures are applied consistently across jurisdictions.

The statutory establishment of the Commission also aligns closely with emerging international approaches to participatory and rights-based heritage governance. UNESCO’s Overall Results Framework under the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage emphasises the importance of accountable institutions, inclusive participation, and legally coordinated safeguarding mechanisms in strengthening heritage governance systems. Similarly, Blake (2022) argues that sustainable safeguarding requires institutional arrangements capable of balancing state authority with meaningful community participation and legal empowerment. By functioning as an autonomous institution with enforceable authority, the proposed Commission would provide a structured governance platform that integrates state agencies, religious authorities, Indigenous communities, traditional practitioners, and civil society actors within a single institutional framework.

Furthermore, the legal authority vested in the Commission would contribute directly to broader sustainable development objectives, particularly SDG 16, which concerns peace, justice, and strong institutions. Effective dispute-resolution mechanisms reduce governance uncertainty, enhance institutional accountability, and strengthen public confidence in legal and administrative systems. At the same time, a coherent and enforceable heritage governance framework may contribute to sustainable economic development under SDG 8 by creating a more stable environment for cultural tourism, creative industries, and heritage-based economic activities (Labadi, 2021; Bortolotto, 2023).

Ultimately, the proposed transformation of the ICHC into a statutory institution or quasi-judicial tribunal is the foundational pillar of the broader governance framework. Without enforceable authority and institutional independence, the Commission would risk reproducing the same structural weaknesses that currently characterise Malaysian heritage governance. The proposed statutory model, therefore, represents not merely a procedural reform but a comprehensive institutional restructuring designed to establish a credible, neutral, and legally coherent mechanism to safeguard Malaysia’s intangible cultural heritage within its complex, plural legal and constitutional landscape.

A Multi-Stakeholder Formulation

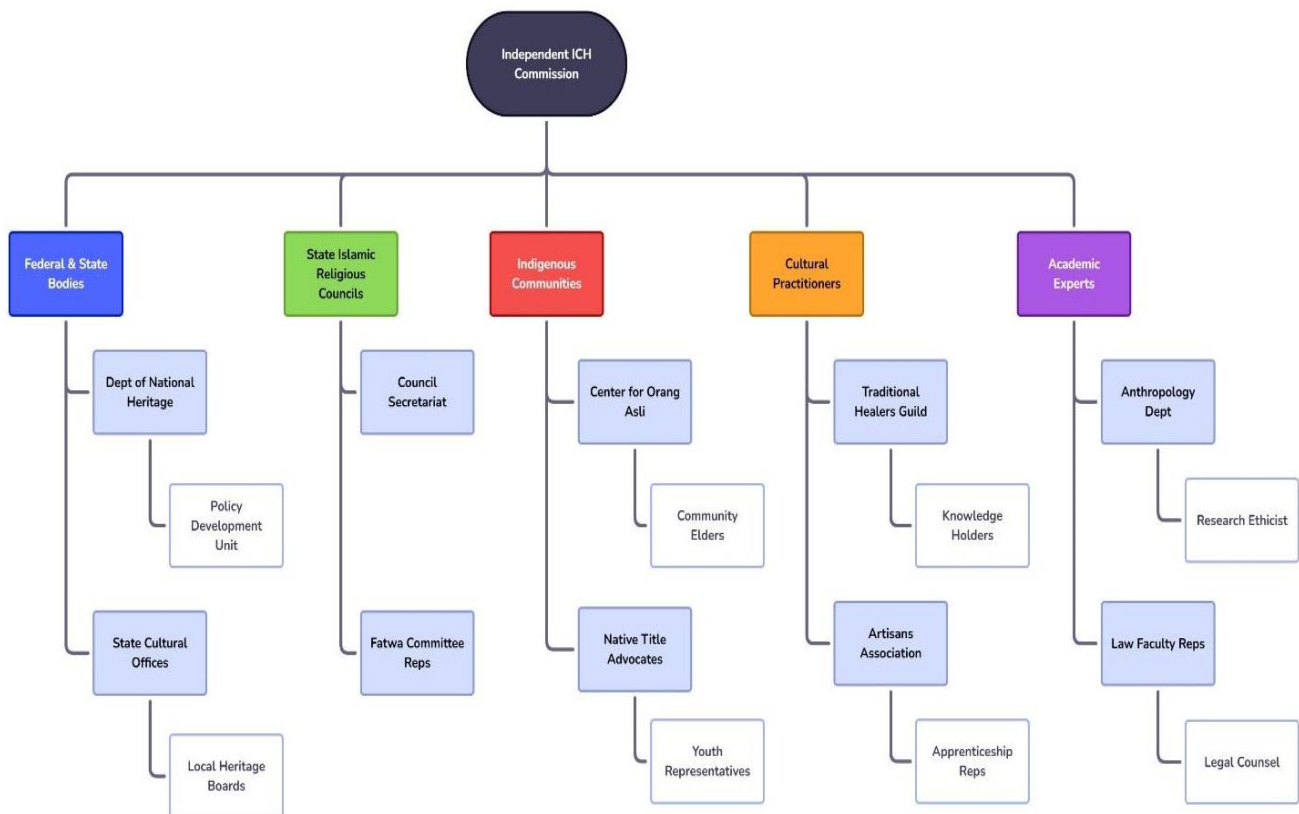


Figure 1: Suggested Composition of ICHC of Malaysia (Mustafa, 2025)

Multi-Stakeholder Composition and Institutional Independence

The effectiveness and legitimacy of the proposed Independent Intangible Cultural Heritage Commission (IICHC) depend significantly upon its institutional independence and inclusive multi-stakeholder composition. Within legally plural and politically decentralised governance systems such as Malaysia, heritage-related disputes frequently involve overlapping interests among federal authorities, state governments, religious institutions, Indigenous communities, cultural practitioners, and civil society actors. Consequently, a centralised or exclusively state-driven institutional structure would be insufficient to address the complex normative and jurisdictional tensions that characterise the Malaysian heritage governance landscape. The proposed multi-stakeholder formulation, therefore, represents a deliberate institutional strategy designed to operationalise inclusive governance, participatory decision-making, and negotiated legal pluralism within a single authoritative framework.

Contemporary scholarship on heritage governance increasingly emphasises that effective safeguarding mechanisms require meaningful stakeholder participation rather than purely top-down administrative regulation. Blake (2022) argues that participatory institutional structures are essential to ensuring the legitimacy and sustainability of intangible cultural heritage (ICH) governance because heritage custodians and local communities possess lived knowledge, customary authority, and cultural expertise that cannot be adequately represented through bureaucratic governance alone. Similarly, Crooke (2022) emphasises that communities should not be treated merely as passive beneficiaries of heritage policies but as active governance actors whose participation is central to institutional accountability and cultural continuity. These perspectives align closely with UNESCO's Overall Results Framework for the Convention for the Safeguarding of the Intangible Cultural Heritage (2023), which identifies inclusive participation and community-centred governance as key indicators of effective safeguarding systems.

The proposed composition of the IICHC reflects these principles by incorporating representatives from multiple governance sectors and normative systems within Malaysia's plural legal environment. The framework envisages participation from relevant federal agencies, including the Department of National Heritage, alongside state government representatives and State Islamic Religious Councils, whose involvement is essential given the significant role of state-level religious governance in many heritage-related disputes. The deliberate inclusion of these institutional actors acknowledges the constitutional realities of Malaysia's federal system and seeks to minimise jurisdictional conflict by embedding negotiation and coordination directly within the governance structure itself.

Equally important is the inclusion of Indigenous communities, traditional cultural practitioners, and civil society organisations representing heritage custodians. This component of the framework is particularly significant because Indigenous and local communities frequently experience marginalisation within formal administrative and legal processes despite being the primary custodians of intangible cultural heritage. Tobin (2022) notes that governance systems operating within legally plural societies must create institutional spaces capable of recognising customary authority and community-based normative systems rather than subordinating them entirely to formal state institutions. Within the Malaysian context, organisations such as the Center for Orang Asli Concerns illustrate the type of community representation envisioned under the proposed framework, ensuring that Indigenous voices and customary perspectives are incorporated directly into governance and adjudicative processes.

The inclusion of academic experts and legal specialists further strengthens the Commission's institutional credibility and technical capacity. Contemporary institutional governance literature highlights the importance of specialised expertise in ensuring effective policy formulation, legal interpretation, and administrative continuity within complex governance systems (Logan, Craith, & Kockel, 2022). Academic participation, therefore, contributes not only to the intellectual rigour of the Commission's deliberations but also to the development of evidence-based policy recommendations and legally coherent dispute-resolution processes. This interdisciplinary composition also enables the Commission to integrate cultural, legal, constitutional, anthropological, and governance perspectives to address heritage-related disputes and policy matters.

Importantly, the multi-stakeholder composition is not merely symbolic or consultative in nature but constitutes a substantive institutional mechanism for mitigating political constraints and operationalising legal pluralism. One of the central weaknesses of existing Malaysian heritage governance institutions is their inability to engage meaningfully with competing normative authorities, particularly when conflicts arise among federal cultural policy, state religious governance, and customary community practices. By formally incorporating these actors within the institutional structure, the proposed Commission transforms potential external conflicts into structured internal deliberative processes governed by procedural fairness, negotiation, and legal accountability.

This approach reflects broader developments within participatory governance theory, which increasingly emphasise collaborative institutional arrangements that facilitate consensus-building and negotiated decision-making in complex policy environments (Pierre & Peters, 2021). Rather than functioning solely as a regulatory authority imposed upon stakeholders, the Commission operates as a structured governance arena within which competing interests are formally represented, mediated, and reconciled through institutional processes. Such an arrangement is particularly important within Malaysia's constitutional context, where heritage governance frequently intersects with politically sensitive matters involving religion, ethnicity, Indigenous rights, and state autonomy.

The role of institutional independence within this framework is equally critical. Although the Commission incorporates multiple stakeholders, its operational legitimacy depends on the existence of neutral leadership and procedural safeguards that insulate decision-making processes from political interference. Accordingly, the framework proposes that the Commission be chaired by an independent judicial or legally qualified authority possessing expertise in constitutional law, heritage governance, and dispute resolution. Judicial leadership strengthens institutional neutrality by ensuring that deliberative processes remain guided by constitutional principles, legal coherence, and procedural fairness rather than partisan or political considerations.

The integration of diverse institutional actors under independent leadership also enhances the Commission's dispute-resolution capacity. Heritage-related conflicts in Malaysia are rarely confined to narrow legal questions; instead, they often involve deeply contested cultural, religious, political, and constitutional considerations. The Commission's multi-stakeholder structure, therefore, enables disputes to be addressed through holistic deliberation informed by legal expertise, cultural understanding, community participation, and administrative coordination simultaneously. This institutional design directly operationalises the Commission's broader mandates concerning dispute resolution, policy harmonisation, and community empowerment within a unified governance framework.

Furthermore, the participatory and inclusive structure of the Commission directly advances Sustainable Development Goal (SDG) 16.7, which emphasises responsive, inclusive, participatory, and representative decision-making at all levels. By institutionalising stakeholder participation and ensuring representation across multiple normative and governance sectors, the Commission enhances both democratic legitimacy and public confidence in heritage governance processes. At the same time, stronger participatory governance structures support sustainable cultural preservation and social cohesion, thereby contributing indirectly to broader socio-economic development objectives associated with SDG 8 (Labadi, 2021; Bortolotto, 2023).

Ultimately, the proposed multi-stakeholder formulation represents a fundamental reconfiguration of Malaysian heritage governance from a fragmented, state-centric administrative model to a collaborative, participatory, and institutionally integrated governance framework. By embedding federal authorities, state actors, religious institutions, Indigenous communities, cultural practitioners, civil society organisations, and academic experts within a single independent institutional structure, the Commission creates a credible and legally coherent platform to address longstanding governance fragmentation and normative conflict. In doing so, the proposed framework strengthens institutional legitimacy, enhances the effectiveness of dispute resolution, and provides a sustainable foundation for the long-term safeguarding of Malaysia's intangible cultural heritage.

Key Mandates of the ICHC



Figure 3: The proposed operational framework for the ICH Commission (Mustafa, 2025)

Dispute Resolution and Mediation

Dispute resolution and mediation constitute the central and most critical mandate of the proposed Independent Intangible Cultural Heritage Commission (IICHC), functioning as the primary institutional mechanism for addressing the longstanding fragmentation and governance paralysis characterising Malaysia’s intangible cultural heritage (ICH) framework. The significance of this mandate lies in its direct response to the absence of an independent, legally empowered institution capable of resolving conflicts arising from overlapping federal, state, religious, and community jurisdictions. Existing heritage governance institutions under the National Heritage Act 2005 (Act 645) remain largely administrative and advisory, lacking the legal authority and institutional neutrality necessary to mediate or adjudicate complex disputes involving competing normative systems and political interests (Mustafa & Abdullah, 2022; Mustafa, 2025).

Within Malaysia’s legally plural constitutional structure, heritage governance disputes frequently extend beyond administrative disagreements to encompass deeper tensions over religion, constitutional authority, Indigenous customary rights, and state autonomy. Harding (2022) observes that the constitutional allocation of powers under the Concurrent List often creates overlapping jurisdictional claims between federal and state authorities, particularly in matters where cultural governance intersects with religious administration and local customary systems. Consequently, disputes over heritage preservation are frequently characterised by institutional deadlock, inconsistent enforcement, and political sensitivity, especially when state-level legal frameworks conflict with federal cultural policies.

The Mak Yong controversy in Kelantan illustrates this governance dilemma most prominently. Although Mak Yong has been recognised internationally as part of Malaysia’s intangible cultural heritage, state-level religious restrictions significantly limited its performance and transmission within Kelantan. The absence of an independent institutional mechanism capable of reconciling federal heritage obligations with state religious governance contributed to prolonged uncertainty and ineffective safeguarding measures (Mustafa, 2025). This case demonstrates the limitations of existing advisory-based governance arrangements and highlights the urgent need for an authoritative institutional body capable of issuing legally binding determinations within contested heritage disputes.

The proposed IICHC addresses this institutional vacuum by serving as a statutory or quasi-judicial tribunal with adjudicative and mediating powers. Unlike existing heritage agencies, the Commission would possess the legal authority to conduct hearings, mediate disputes, issue enforceable determinations, and provide authoritative interpretations concerning conflicts involving heritage protection, constitutional obligations, and competing legal frameworks. Such tribunal-like authority transforms heritage governance from a politically dependent administrative process into a legally structured and procedurally accountable system grounded in principles of neutrality, fairness, and institutional independence.

Contemporary scholarship on legal pluralism and governance strongly supports the establishment of institutional mechanisms capable of mediating among competing normative systems. Tobin (2022) argues that governance in legally plural societies requires institutions capable of negotiating and reconciling state law, customary law, and community-based normative systems through inclusive and authoritative processes. Similarly, Von Benda-Beckmann and Turner (2021) contend that legal pluralism should be managed through institutional harmonisation rather than hierarchical domination by singular state legal authority. The proposed dispute-resolution mandate operationalises these theoretical principles by creating an institutional platform that integrates federal legal obligations, state interests, religious considerations, and customary community rights into a coherent governance framework.

Importantly, the Commission's dispute-resolution function is designed to address two principal categories of conflict: federal–state disputes and community–state disputes. Federal–state disputes frequently arise where state-level legislation, religious regulations, or administrative policies conflict with national heritage recognition and federal safeguarding obligations. In such situations, the Commission would function as an impartial adjudicator capable of facilitating structured negotiation while ultimately issuing binding determinations grounded in constitutional interpretation and statutory authority. This mechanism would significantly reduce governance inconsistency and institutional paralysis by providing a definitive legal avenue for resolving jurisdictional disputes.

The Commission's role in addressing community–state disputes is equally significant, particularly concerning Indigenous communities and vulnerable cultural custodians. Indigenous groups such as the Orang Asli often encounter systemic barriers in asserting customary cultural rights within formal legal and administrative systems. Existing governance mechanisms frequently marginalise community voices due to limited legal representation, inadequate procedural access, and the dominance of state-centric legal frameworks. The proposed Commission addresses these shortcomings by providing accessible dispute-resolution mechanisms that recognise customary rights and facilitate community participation in formal governance processes.

The relevance of this function is reinforced by the landmark decision in *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002], which recognised the legal significance of Indigenous customary rights within the Malaysian constitutional framework. The case demonstrates the judiciary's potential to acknowledge non-state normative systems and highlights the broader institutional need for governance mechanisms to integrate customary law into formal legal structures. By incorporating adjudicative authority and community representation, the proposed Commission extends these principles into the heritage governance sphere, enabling Indigenous and local communities to assert and protect cultural rights more effectively.

Beyond adjudication, the mediation component of the Commission's mandate is equally important in reducing political tension and fostering collaborative governance. Heritage disputes are often politically and culturally sensitive, involving competing perceptions of identity, religion, historical legitimacy, and community ownership. A mediation-oriented institutional approach allows conflicts to be addressed through dialogue, negotiation, and consensus-building before escalating into prolonged legal or political confrontation. Pierre and Peters (2021) note that collaborative governance mechanisms are particularly effective in complex policy environments characterised by multiple stakeholders and overlapping institutional authority. The Commission's mediation role, therefore, complements its adjudicative authority by encouraging negotiated solutions while preserving the availability of binding legal resolution where necessary.

The institutional independence of the Commission is crucial to the credibility and effectiveness of its dispute-resolution mandate. Existing advisory institutions frequently suffer from political dependency because their recommendations remain subject to executive discretion and administrative implementation. By contrast, the proposed Commission's quasi-judicial structure ensures procedural neutrality and reduces susceptibility to political interference. Leadership by an independent judicial or legally qualified chairperson further strengthens public confidence in the fairness and legitimacy of decision-making processes.

From a broader governance perspective, the dispute-resolution mandate directly strengthens the rule of law and institutional accountability, consistent with Sustainable Development Goal (SDG) 16.3, which emphasises equal access to justice and effective institutions. Effective dispute-resolution mechanisms reduce regulatory

uncertainty, improve governance coherence, and enhance public trust in institutional processes. At the same time, stable and predictable heritage governance systems create more favourable conditions for sustainable cultural tourism, creative industries, and community-based economic development associated with SDG 8 (Labadi, 2021; Bortolotto, 2023).

Ultimately, the dispute resolution and mediation mandate redefines heritage governance in Malaysia by transforming it from a fragmented administrative process into a coherent and enforceable legal framework capable of effectively managing plural legal systems and competing political interests. Through adjudicative authority, mediation mechanisms, and institutional independence, the proposed ICHC provides a credible governance platform for resolving longstanding jurisdictional conflicts, protecting community cultural rights, and strengthening the overall effectiveness of Malaysia's intangible cultural heritage safeguarding system.

Policy Harmonisation and Coordination

Policy harmonisation and coordination constitute the second core mandate of the proposed Independent Intangible Cultural Heritage Commission (IICHC), addressing one of the most persistent structural weaknesses in Malaysia's heritage governance system: regulatory fragmentation arising from overlapping federal–state jurisdictions and inconsistent legal frameworks. Given that cultural heritage falls within the Concurrent List of the Ninth Schedule of the Federal Constitution, both federal and state governments possess legislative authority in matters relating to cultural governance. While this constitutional arrangement reflects the federal character of Malaysia's governance structure, it has also generated significant jurisdictional ambiguity, regulatory inconsistency, and institutional conflict, particularly where state-level legal or religious frameworks diverge from federal heritage policies (Harding, 2022).

Existing heritage governance arrangements under the National Heritage Act 2005 (Act 645) provide only limited mechanisms for intergovernmental coordination and lack sufficient institutional authority to ensure consistent implementation of safeguarding measures across jurisdictions. As a result, heritage governance frequently operates in a fragmented manner, where variations in state legislation, administrative priorities, and political considerations undermine coherent national policy implementation. Mustafa (2025) observes that the absence of a central coordinating mechanism has significantly contributed to inconsistent approaches to heritage recognition, cultural preservation, and dispute management, particularly in cases involving state religious authorities and customary community practices.

Within legally plural governance environments, fragmented policy implementation often produces broader institutional consequences, including legal uncertainty, duplication of administrative functions, inconsistent safeguarding standards, and increased political tension among stakeholders. Contemporary governance scholarship increasingly emphasises that effective institutional coordination is essential for managing complex policy areas involving multiple legal systems and overlapping jurisdictions (Pierre & Peters, 2021). Similarly, Labadi (2021) argues that sustainable heritage governance requires integrated institutional frameworks that align policy objectives, legal obligations, and administrative practices across different levels of governance. The proposed harmonisation mandate, therefore, seeks to address these structural deficiencies by positioning the IICHC as the central coordinating institution responsible for facilitating coherent and collaborative heritage governance throughout the federation.

A central instrument supporting this mandate is the proposed Model State Heritage Law, designed to serve as a harmonised legislative template that guides state-level heritage governance while respecting constitutional autonomy and regional diversity. Rather than imposing uniformity through centralised federal control, the proposed model adopts a cooperative approach to harmonisation, encouraging states to align key safeguarding principles, definitions, procedural standards, and enforcement mechanisms with national heritage objectives. This approach reflects contemporary understandings of cooperative federalism, where policy coherence is achieved through institutional coordination and negotiated alignment rather than hierarchical imposition.

The Model State Heritage Law would establish minimum safeguarding standards while allowing states sufficient flexibility to adapt their implementation to local cultural, religious, and socio-political contexts. Such flexibility is particularly important within Malaysia's plural governance landscape, where heritage practices frequently

intersect with local customary systems and state-level religious governance structures. By creating a shared legislative framework grounded in common principles while preserving contextual sensitivity, the Commission would help reduce regulatory inconsistency without undermining state constitutional authority.

Comparative experiences from other decentralised governance systems reinforce the importance of harmonisation mechanisms within plural legal environments. Indonesia's decentralised cultural governance framework, for example, demonstrates how coordination between national and regional authorities may facilitate more coherent policy implementation while respecting regional autonomy and local cultural diversity (Anaya, 2023). Similarly, international heritage governance scholarship increasingly recognises that effective safeguarding systems require institutional structures capable of integrating national policy objectives with local governance realities and community participation (Bortolotto, 2023; Blake, 2022). The proposed harmonisation framework seeks to operationalise these principles in the Malaysian context by establishing the Commission as a coordinating body that can bridge federal, state, and community governance structures.

Beyond legislative coordination, the Commission's harmonisation mandate also encompasses a proactive review and advisory function concerning proposed legislation, regulations, and administrative policies affecting heritage governance. Under this mechanism, the Commission would be empowered to review proposed federal and state legal instruments to assess their compatibility with national heritage objectives, constitutional principles, and safeguarding obligations. This preventive institutional function is particularly important because many heritage-related conflicts arise not merely from implementation failures but from inconsistencies embedded in legislative and regulatory frameworks.

For example, restrictive policies affecting traditional cultural practices may inadvertently conflict with federal safeguarding obligations or internationally recognised heritage commitments. Without an independent coordinating institution capable of identifying and addressing such inconsistencies at the policy-development stage, governance conflicts frequently escalate into broader constitutional and political disputes. The Commission's advisory and review role, therefore, helps reduce regulatory conflict before disputes materialise, thereby strengthening governance coherence and institutional predictability.

The harmonisation mandate additionally supports greater administrative coordination among governmental agencies, local authorities, cultural institutions, and community stakeholders involved in heritage safeguarding. Heritage governance often involves multiple institutions operating independently across sectors such as tourism, education, cultural affairs, religious administration, Indigenous affairs, and local government. In the absence of coordinated governance mechanisms, administrative duplication and policy inconsistency may significantly weaken the effectiveness of safeguarding. The proposed Commission would therefore function as an institutional nexus that facilitates inter-agency cooperation, information sharing, technical coordination, and integrated policy planning.

Importantly, policy harmonisation under the proposed framework does not imply the elimination of legal pluralism or cultural diversity. Rather, it seeks to manage diversity through coordinated governance mechanisms that can reconcile multiple normative systems within a coherent institutional framework. Tobin (2022) argues that governance within plural legal environments should prioritise negotiated coexistence and institutional accommodation rather than rigid legal uniformity. The proposed harmonisation mandate reflects this perspective by promoting legal coherence while preserving constitutional diversity, cultural autonomy, and community participation.

The effectiveness of this mandate is closely linked to the Commission's institutional authority and independence. Without statutory recognition and enforceable authority, policy coordination efforts would likely remain advisory and vulnerable to political fragmentation, similar to existing governance arrangements. Consequently, legislative amendments to the National Heritage Act 2005 are essential to empower the Commission formally with coordination, advisory, and harmonisation authority. Such reforms would ensure that the Commission possesses sufficient institutional legitimacy to facilitate cooperation among federal and state actors while maintaining neutrality within politically sensitive governance environments.

The harmonisation function also contributes significantly to broader sustainable development objectives, particularly SDG 16, which concerns effective, accountable, and inclusive institutions. Coherent governance systems enhance legal certainty, improve institutional accountability, and reduce administrative inefficiency. At the same time, harmonised heritage governance frameworks provide more stable regulatory environments for sustainable cultural tourism, investment in cultural industries, and long-term heritage conservation initiatives associated with SDG 8 (Labadi, 2021; Bortolotto, 2023). Greater policy consistency additionally strengthens Malaysia's ability to fulfil international safeguarding commitments and participate more effectively within global cultural governance frameworks.

Ultimately, the policy harmonisation and coordination mandate represents a critical institutional mechanism for transforming Malaysia's fragmented heritage governance system into a more coherent, collaborative, and legally integrated framework. Through legislative coordination, preventive policy review, intergovernmental cooperation, and institutional mediation, the proposed ICHC provides the structural foundation necessary to balance constitutional federalism, legal pluralism, and national safeguarding objectives within a unified governance model that supports the long-term protection of Malaysia's intangible cultural heritage.

Community Empowerment and Participation

Community empowerment and participation constitute the third core mandate of the proposed Independent Intangible Cultural Heritage Commission (IICHC), reflecting a fundamental shift from state-centric heritage administration toward a participatory and community-centred governance framework. This mandate recognises that local communities, Indigenous groups, and traditional cultural practitioners are not merely beneficiaries of heritage protection but are the primary custodians, transmitters, and bearers of intangible cultural heritage (ICH). Consequently, sustainable safeguarding cannot be achieved solely through top-down legal or administrative mechanisms but requires institutional structures that actively empower communities to participate meaningfully in governance, decision-making, and cultural preservation processes.

Contemporary scholarship on intangible cultural heritage governance consistently emphasises the centrality of community participation within safeguarding frameworks. Blake (2022) argues that effective ICH governance depends on institutional arrangements that recognise communities as active rights-holders and participants in governance rather than passive subjects of state protection. Similarly, Crooke (2022) highlights that community-centred governance enhances both institutional legitimacy and the safeguarding of sustainability because cultural knowledge, customary practices, and lived experiences are deeply embedded within local communities themselves. These perspectives are reinforced by UNESCO's Overall Results Framework for the Convention for the Safeguarding of the Intangible Cultural Heritage (2023), which identifies community participation, inclusivity, and local empowerment as essential indicators of effective heritage safeguarding systems.

In the Malaysian context, the need for stronger community participation is particularly significant given the country's legally plural and culturally diverse social structure. Indigenous communities, including the Orang Asli, as well as traditional practitioners and local cultural groups, frequently encounter systemic barriers in accessing legal protection, administrative support, and institutional representation within formal heritage governance mechanisms. Existing governance structures under the National Heritage Act 2005 (Act 645) remain largely state-driven and administratively oriented, often limiting community involvement to consultative roles without providing meaningful decision-making authority or legal empowerment (Mustafa & Abdullah, 2022; Mustafa, 2025). This exclusion contributes not only to governance inefficiency but also to broader perceptions of marginalisation and institutional distrust among heritage custodians.

To address these shortcomings, the proposed framework recommends establishing a dedicated Community Liaison Office (CLO) within the Commission as the principal institutional mechanism for operationalising community participation and empowerment. The CLO would function as the Commission's outreach, facilitation, and support unit, responsible for strengthening communication and engagement between heritage communities and formal governance institutions. Its role extends beyond administrative liaison functions to include legal assistance, technical support, capacity-building initiatives, and community advocacy.

One of the CLO's most important functions would be to provide accessible legal assistance and advisory support to communities seeking to protect cultural practices, customary knowledge, and heritage rights. Indigenous and local communities often face substantial legal and procedural challenges when attempting to engage with formal governance systems, particularly in disputes involving land, cultural ownership, religious restrictions, or heritage recognition. The proposed Commission addresses this institutional gap by creating a mechanism through which communities may obtain legal guidance, representation, and procedural support within the Commission's adjudicative and mediation processes.

The importance of such legal empowerment is underscored by the landmark decision in *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002], which recognised the legal significance of Indigenous customary rights within Malaysia's constitutional framework. Although the case primarily concerned customary land rights, its broader implications extend to the recognition of non-state normative systems and the protection of Indigenous cultural identity. The proposed Commission builds upon these principles by institutionalising mechanisms to support communities in asserting and defending cultural rights within formal governance processes. Tobin (2022) similarly argues that governance in legally plural societies must include institutional pathways through which Indigenous and community-based legal interests can participate meaningfully in state governance structures.

Beyond legal support, the CLO would also provide technical and administrative assistance to communities engaged in safeguarding activities. This includes support for heritage documentation, inventory preparation, cultural mapping, safeguarding planning, and community-led heritage nomination processes. Such initiatives are particularly important because many local communities possess substantial cultural knowledge and heritage practices but lack the technical expertise and institutional resources necessary to navigate formal safeguarding procedures effectively. By strengthening community capacity and technical literacy, the Commission facilitates more meaningful participation in national and international heritage governance processes.

This participatory approach aligns closely with broader developments in rights-based and community-centred heritage governance internationally. Bortolotto (2023) notes that contemporary safeguarding frameworks increasingly emphasise collaborative governance models where communities exercise agency in determining how heritage is identified, represented, and transmitted. Similarly, UNESCO's safeguarding framework encourages participatory inventorying and community-led heritage initiatives to ensure cultural continuity and local ownership of safeguarding processes. The proposed Commission operationalises these principles institutionally by embedding community participation directly within governance structures rather than limiting it to peripheral consultation.

Importantly, the empowerment mandate also contributes significantly to addressing structural inequalities and governance imbalances within Malaysia's heritage system. Historically, many heritage-related decisions have been dominated by governmental, political, or administrative actors, often without adequate representation of local cultural custodians. The proposed framework seeks to rebalance these relationships by institutionalising bottom-up participation and recognising communities as equal stakeholders within heritage governance processes. This approach strengthens procedural fairness and enhances the legitimacy of institutional decision-making, particularly in disputes involving culturally sensitive or politically contested practices.

The participatory framework additionally carries important socio-economic implications. Contemporary heritage governance literature increasingly recognises that community empowerment contributes not only to cultural preservation but also to sustainable development and local economic resilience (Labadi, 2021; Bortolotto, 2023). Through technical assistance, capacity building, and institutional support, communities can engage more effectively in heritage-based economic activities, including sustainable cultural tourism, traditional crafts, cultural entrepreneurship, and creative industries. Such opportunities align directly with Sustainable Development Goal (SDG) 8, which concerns inclusive and sustainable economic growth, particularly in rural and Indigenous communities where heritage resources are important sources of cultural and economic sustainability.

At the same time, the empowerment mandate contributes directly to SDG 16.7, which emphasises responsive, inclusive, participatory, and representative decision-making at all levels. By institutionalising community

participation within formal governance structures, the proposed Commission strengthens democratic legitimacy, social inclusion, and access to justice. This is particularly significant within the Malaysian context, where marginalised communities have historically experienced limited institutional representation in matters affecting cultural rights and heritage governance.

Furthermore, the integration of community participation within a legally empowered institutional framework distinguishes the proposed Commission from conventional advisory or consultative models. Existing participatory mechanisms often remain symbolic because communities lack meaningful influence over final governance outcomes. In contrast, the proposed framework combines participatory engagement with adjudicative authority and institutional accountability, ensuring that community perspectives are incorporated substantively within decision-making processes rather than merely acknowledged procedurally.

Ultimately, the community empowerment and participation mandate transforms the philosophy of governance underlying heritage protection in Malaysia. Rather than treating communities as passive recipients of state-led preservation policies, the proposed ICHC positions them as active governance partners, rights-holders, and cultural custodians whose participation is essential to effective safeguarding. Through legal empowerment, technical support, participatory governance, and institutional representation, the Commission establishes a more inclusive, equitable, and sustainable heritage governance framework that strengthens both cultural preservation and community resilience within Malaysia’s plural legal and socio-cultural landscape.

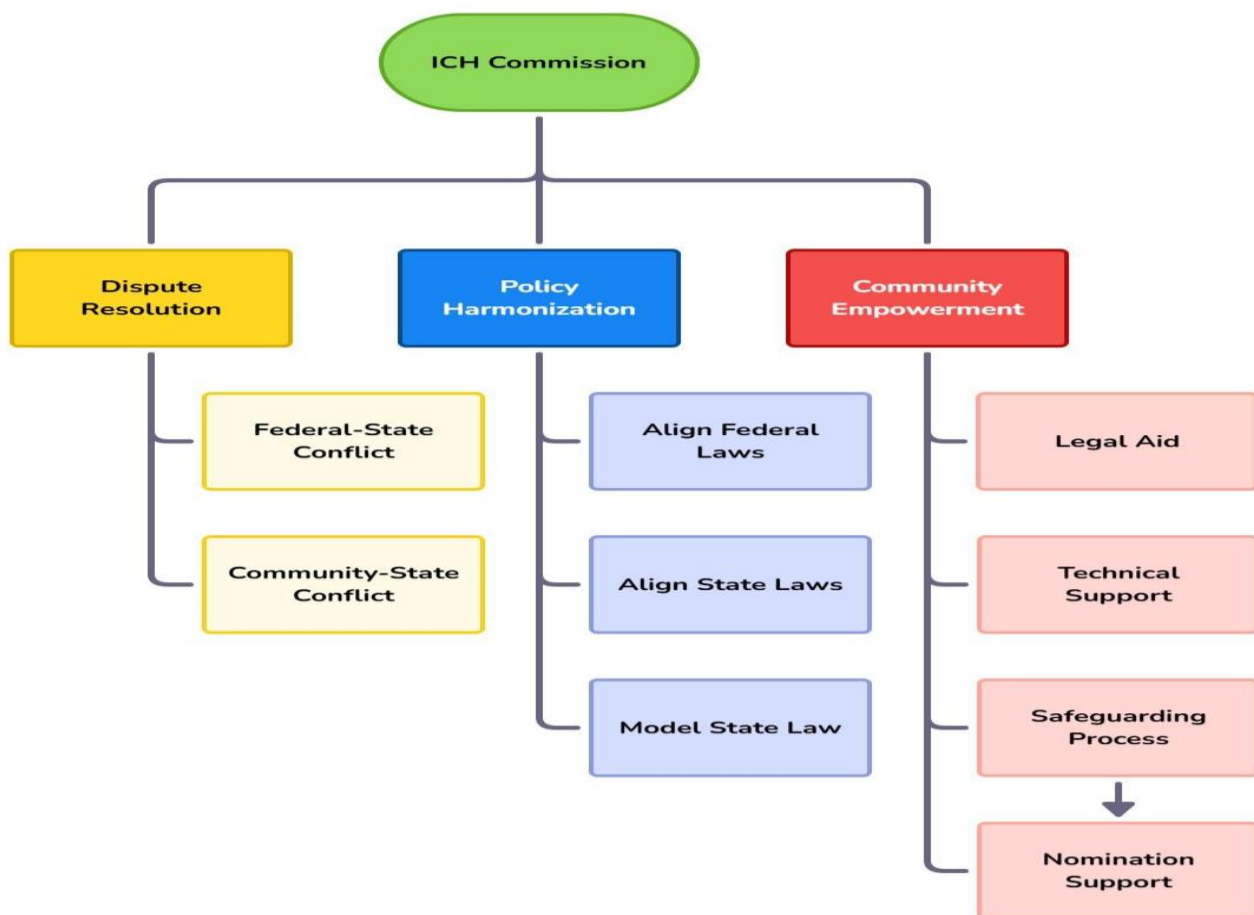


Figure 4: Stakeholders’ Connection: Building bridges among all heritage stakeholders (Mustafa, 2025)

Applicability of the Innovation / SDGs Element/ Commercial Potential

The proposed operational framework for the Independent Intangible Cultural Heritage Commission (IICHC) demonstrates substantial practical applicability in Malaysia’s contemporary governance landscape by addressing longstanding institutional weaknesses stemming from fragmented jurisdiction, legal pluralism, and ineffective heritage administration. More significantly, the framework extends beyond conventional cultural preservation

objectives by integrating institutional reform, sustainable development principles, and community-centred governance into a single legally coherent model. In doing so, the proposed Commission positions intangible cultural heritage (ICH) governance not merely as a cultural or administrative concern but as an important component of national institutional resilience, social cohesion, and sustainable socio-economic development.

The innovative value of the framework lies primarily in its institutional restructuring of Malaysian heritage governance by establishing an independent statutory body or quasi-judicial tribunal with enforceable legal authority. Existing governance mechanisms under the National Heritage Act 2005 (Act 645) remain largely advisory and administratively fragmented, limiting their capacity to resolve disputes, coordinate policy implementation, or manage competing normative systems effectively (Mustafa & Abdullah, 2022; Mustafa, 2025). By contrast, the proposed IICHC introduces a legally empowered institutional mechanism capable of adjudicating disputes, harmonising federal–state policy implementation, and facilitating participatory governance within a plural legal environment. This institutional innovation directly addresses the structural governance gaps that have historically undermined heritage safeguarding efforts in Malaysia.

From a governance perspective, the framework aligns closely with Sustainable Development Goal (SDG) 16, particularly the objectives concerning peace, justice, strong institutions, and inclusive governance. Contemporary governance scholarship increasingly recognises that institutional effectiveness depends on accountability, procedural fairness, and accessible mechanisms for dispute resolution and stakeholder participation (Pierre & Peters, 2021). The proposed Commission contributes directly to these objectives by establishing a neutral institutional platform that mediates conflicts among federal authorities, state governments, religious institutions, Indigenous communities, and cultural practitioners through structured legal and participatory processes.

More specifically, the Commission advances SDG 16.3 by strengthening access to justice and the rule of law through its dispute-resolution and quasi-judicial functions. Existing heritage disputes in Malaysia frequently remain unresolved due to institutional ambiguity and the absence of authoritative governance mechanisms capable of reconciling overlapping legal and political interests. By providing legally binding adjudicative processes and institutional mediation mechanisms, the proposed framework enhances the predictability of governance, procedural consistency, and public confidence in heritage-related decision-making. Furthermore, the multi-stakeholder institutional structure contributes directly to SDG 16.7, which emphasises inclusive, participatory, and representative decision-making at all levels. The integration of community representatives, Indigenous stakeholders, religious authorities, academic experts, and governmental actors within the Commission ensures that governance processes remain both inclusive and responsive to diverse social and cultural interests.

The framework also has substantial implications for sustainable economic development, consistent with SDG 8. Contemporary heritage governance literature increasingly highlights the economic significance of intangible cultural heritage, particularly in relation to sustainable cultural tourism, creative industries, cultural entrepreneurship, and community-based economic development (Labadi, 2021; Bortolotto, 2023). Malaysia's rich cultural diversity and heritage traditions represent valuable economic resources that can contribute to long-term sustainable growth if supported by coherent governance structures and effective safeguarding mechanisms.

However, the economic potential of heritage resources is frequently undermined by institutional instability, inconsistent policy implementation, and unresolved jurisdictional disputes. Fragmented governance environments create regulatory uncertainty that discourages long-term investment, limits sustainable tourism planning, and weakens the protection of cultural assets. The proposed Commission addresses these limitations by establishing a more stable and coordinated governance framework that supports sustainable heritage-based economic activities while protecting cultural authenticity and community interests.

The Commission's community empowerment mandate is particularly significant in this regard. Through the proposed Community Liaison Office (CLO), local communities and Indigenous groups would receive legal assistance, technical support, and capacity-building opportunities enabling them to participate more effectively in heritage safeguarding and economic activities linked to cultural preservation. Such initiatives may include community-led tourism development, traditional craft industries, cultural performance initiatives, heritage

education programmes, and local entrepreneurship based on cultural resources. Blake (2022) and Crooke (2022) both emphasise that community-centred heritage governance contributes significantly to sustainable local development because communities possessing direct cultural ownership are more likely to safeguard heritage resources responsibly while benefiting economically from their preservation.

Importantly, the framework also promotes sustainability by integrating heritage protection with participatory governance and long-term institutional planning. Unlike short-term administrative initiatives or fragmented project-based safeguarding efforts, the proposed Commission introduces an institutional model grounded in continuity, accountability, and legal enforceability. Logan, Craith, and Kockel (2022) note that effective heritage governance depends significantly upon institutional stability, specialised expertise, and sustainable funding structures capable of supporting long-term safeguarding objectives. Accordingly, the proposed framework recommends establishing dedicated financial mechanisms, such as parliamentary funding allocations or a national heritage fund, to ensure the Commission's operational independence and long-term institutional resilience.

The applicability of the proposed framework is further strengthened by its compatibility with international heritage governance standards and contemporary UNESCO safeguarding principles. UNESCO's Overall Results Framework for the Convention for the Safeguarding of the Intangible Cultural Heritage (2023) increasingly emphasises integrated governance, participatory safeguarding, legal coordination, and community empowerment as central elements of effective ICH protection systems. The proposed ICHC operationalises these principles within the Malaysian constitutional and socio-political context by combining adjudicative authority, participatory governance, policy harmonisation, and community support within a single institutional structure.

Moreover, the framework demonstrates significant adaptability within Malaysia's legally plural environment because it does not seek to eliminate diversity or impose rigid centralisation. Instead, it provides institutional mechanisms to manage constitutional complexity and normative diversity through structured coordination, mediation, and inclusive governance processes. Tobin (2022) argues that effective governance within plural legal societies requires institutions capable of facilitating negotiated coexistence among multiple normative systems rather than privileging singular legal authority. The proposed Commission reflects this principle by functioning as a mediating institutional platform that accommodates state law, religious governance, customary systems, and community interests within a coherent governance framework.

The commercial and developmental potential of the framework, therefore, extends beyond heritage preservation itself. A more coherent and predictable heritage governance environment may enhance Malaysia's international cultural reputation, strengthen sustainable tourism branding, encourage responsible cultural investment, and support the development of creative and cultural industries. Additionally, stronger institutional governance may facilitate greater international collaboration, heritage funding opportunities, and regional cultural partnerships within Southeast Asia and beyond.

Ultimately, the proposed ICHC represents an innovative and transformative governance model capable of addressing multiple institutional, legal, social, and economic challenges simultaneously. By integrating enforceable legal authority, participatory governance, policy coordination, and community empowerment within a single institutional framework, the proposed Commission advances contemporary understandings of sustainable heritage governance and directly contributes to broader national development objectives. Its applicability, therefore, extends beyond the protection of intangible cultural heritage alone, positioning the Commission as a strategic institutional mechanism for strengthening governance effectiveness, promoting cultural sustainability, and enhancing inclusive socio-economic development within Malaysia's plural constitutional landscape.

CONCLUSION

The proposed Independent Intangible Cultural Heritage Commission (IICHC) represents a fundamental reconfiguration of Malaysia's existing heritage governance framework, moving beyond the limitations of advisory-based institutional arrangements toward a legally empowered, participatory, and structurally coherent

governance model. The study demonstrates that the contemporary challenges confronting intangible cultural heritage (ICH) safeguarding in Malaysia are not merely administrative deficiencies but manifestations of deeper structural tensions arising from constitutional federalism, legal pluralism, fragmented institutional authority, and political dependency. Existing governance mechanisms under the National Heritage Act 2005 (Act 645) remain constrained by limited autonomy, a lack of enforceable authority, and an inability to effectively reconcile competing normative systems within Malaysia's plural legal landscape.

By integrating doctrinal legal analysis, comparative institutional evaluation, legal pluralism theory, and governance-oriented inquiry, this study advances a solution-oriented institutional framework to address these longstanding structural deficiencies. The proposed Commission is conceptualised not simply as an administrative body but as an independent statutory institution or quasi-judicial tribunal endowed with legally enforceable authority, institutional autonomy, and multi-stakeholder representation. Through its three interrelated core mandates—dispute resolution and mediation, policy harmonisation and coordination, and community empowerment and participation—the framework establishes a comprehensive governance mechanism that balances federal constitutional obligations, state autonomy, religious governance, customary legal systems, and community cultural rights within a unified institutional structure.

The significance of the proposed framework extends beyond heritage preservation alone. At a theoretical level, the study contributes to the broader scholarly discourse on legal pluralism, participatory governance, and institutional reform by demonstrating how complex governance challenges in plural societies can be managed through inclusive, negotiated, and legally coordinated institutional mechanisms. Rather than treating legal pluralism as an obstacle to governance coherence, the proposed model reconceptualises normative diversity as a governance reality requiring structured institutional accommodation and mediation. In doing so, the study contributes to emerging international scholarship advocating collaborative and community-centred governance approaches within heritage protection systems (Blake, 2022; Tobin, 2022; Bortolotto, 2023).

The framework additionally contributes to contemporary discussions on governance effectiveness and sustainable development. By strengthening institutional accountability, access to justice, policy coordination, and inclusive participation, the proposed Commission advances the objectives of Sustainable Development Goal (SDG) 16 concerning peace, justice, and strong institutions. Simultaneously, the framework recognises the broader socio-economic potential of intangible cultural heritage by supporting sustainable cultural tourism, creative industries, community entrepreneurship, and local economic resilience consistent with SDG 8. The integration of legal authority, participatory governance, and sustainable development principles, therefore, positions the proposed Commission as both a cultural safeguarding mechanism and a strategic governance institution contributing to broader national development objectives.

Importantly, the study also demonstrates that effective heritage governance within legally plural societies requires institutional innovation that transcends conventional bureaucratic approaches. Comparative insights drawn from Indonesia, the Philippines, and Japan illustrate that successful safeguarding systems depend upon institutional continuity, community participation, enforceable authority, and coordinated governance mechanisms capable of managing complex socio-legal relationships. The proposed Malaysian framework adapts these comparative lessons contextually rather than mechanically, ensuring that the recommended institutional structure remains constitutionally sensitive, culturally responsive, and operationally feasible within Malaysia's unique federal and plural legal environment.

Nevertheless, the operationalisation of the proposed framework will require substantial legislative, political, and institutional commitment. Formal amendments to the National Heritage Act 2005 remain essential to establish the Commission's statutory authority, adjudicative functions, and policy coordination powers. Equally important is the development of sustainable financial mechanisms, including the establishment of a dedicated national heritage fund or a parliamentary allocation, to ensure long-term institutional independence and operational continuity. Without adequate legal authority and financial sustainability, the proposed Commission risks reproducing the structural weaknesses that currently affect existing heritage governance institutions.

Future research should therefore continue exploring the practical dimensions of implementing institutional reform within legally plural governance systems. Further interdisciplinary studies involving constitutional law,

public administration, Indigenous rights, cultural policy, and comparative governance would contribute significantly to refining the operational framework and evaluating its long-term feasibility. In particular, greater attention should be given to procedural design, institutional accountability mechanisms, funding sustainability, and comparative regional experiences concerning participatory heritage governance and tribunal-based institutional models.

Ultimately, the proposed Independent Intangible Cultural Heritage Commission represents more than a policy recommendation for cultural preservation; it constitutes a broader institutional response to the governance complexities of contemporary plural societies. By combining enforceable legal authority, participatory governance, policy harmonisation, and community empowerment within a single, integrated framework, the proposed model offers a transformative approach to strengthening institutional legitimacy, constitutional coherence, and cultural sustainability in Malaysia. In this respect, the study contributes not only to the advancement of heritage governance scholarship but also to broader debates concerning institutional reform, democratic participation, and the management of legal pluralism within modern constitutional states.

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