

MUHAMMAD ASHRAF BIN ABDUL RAHMAN DOCTOR OF PHILOSOPHY 2019

**TRANSBOUNDARY MARINE PROTECTED
AREA FOR OPTIMAL MARINE
ENVIRONMENTAL PROTECTION IN BRUNEI
BAY, SOUTH CHINA SEA**

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RAHMAN**

**DOCTOR OF PHILOSOPHY
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MUHAMMAD ASHRAF BIN ABDUL RAHMAN

**Thesis Submitted in Fulfilment of the Requirement for the Degree of
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DEDICATION

Abah, Umi

Ini Untukmu

“Children inherit the qualities of the parents, no less than their physical features”

-Mahatma Gandhi

Abstract of thesis presented to the Senate of Universiti Malaysia Terengganu in fulfilment of the requirements for the degree of Doctor of Philosophy

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This study is focused on marine environmental protection in Malaysia streamlining towards the proposed transboundary marine protected area (TMBPA) in Brunei Bay (BB). Located on the west coast off both the states of Sabah and Sarawak, its access to the South China Sea exposes BB to anthropogenic pollution. There are three objectives of this study:-(i) to examine the domestication of international laws in Malaysia; (ii) to examine the efficacy and sufficiency of the existing Malaysian governance framework in governing her marine environment; and (ii) to examine the possibility of designating a TBMPA in BB involving Malaysia (Federal Territory of Labuan and the states of Sabah and Sarawak) and Brunei. This study examined the national policies, federal acts and state enactments, where it was found that Malaysia's policies regarding marine environmental protection have progressed in accordance with the international conservation movement. However, the outdated and piecemeal laws warrant for immediate

revision. Legal provisions relating to MPAs urgently need revisiting to be in tandem with the multilateral international agreements (MEAs) signed. It is further observed that although Malaysia is well guided by these MEAs, their domestication are still insufficient. This could be due to the federal-state divisions of power under the Federal Constitution. On the study for the proposed TBMPA in BB, which is the overarching objective of this study, the Australian Great Barrier Reef MPA and the American-Canadian Great Lake were used as benchmark. A bilateral treaty between Brunei and Malaysia is proposed with the main aims of:- (i) protecting the Brunei Bay marine environment; (ii) practising guiding principles to balance between environmental protection and economic development; and (iii) ensure States to observe their legal obligations under the treaties. As for the relationship between the Federal Government and the states of Sabah and Sarawak, an inter-governmental agreement modified from the Australian model was proposed to provide a clear scope of duty for each government level. The recommendations put forth in this study may improve the Malaysian marine environmental protection efforts particularly in BB, which may perhaps be adopted as a model for other transnational marine environmental protection frameworks in the future.

Abstrak tesis yang dikemukakan kepada Senat Universiti Malaysia Terengganu sebagai memenuhi keperluan untuk Ijazah Doktor Falsafah

**KAWASAN PERLINDUNGAN MARIN LINTAS BATAS BAGI
PERLINDUNGAN PERSEKITARAN MARIN YANG OPTIMA DI TELUK
BRUNEI, LAUT CHINA SELATAN**

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Kajian in difokuskan kepada perlindungan alam sekitar marin di Malaysia dan diselaraskan kepada cadangan taman perlindungan marin lintas batas (TBMPA) di Teluk Brunei (TB). Terletak di pantai barat kedua-dua negeri Sabah dan Sarawak, akses kepada Laut China Selatan mendedahkan teluk ini kepada pencemaran antropogenik. Kajian ini mempunyai tiga objektif: (i) untuk memeriksa domestikasi undang-undang antarabangsa kedalam governan perlindungan Malaysia; (ii) memeriksa keberkesanan dan kecukupan kerangka governan Malaysia yang tersedia dalam memerintah alam sekitar marinnnya; dan (iii) untuk memeriksa kemungkinan perekaan sebuah taman laut lintas batas yang melibatkan Malaysia (Wilayah Persekutuan Labuan, dan negeri Sabah dan Sarawak) dan Brunei. Kajian ini memeriksa polisi-polisi nasional, akta persekutuan, dan enakmen negeri, dimana didapati polisi Malaysia mengenai perlindungan alam sekitar marin telah maju menurut pergerakan konservasi antarabangsa Walaubagaimanapun, undang-undang

yang usang dan berserpihan memerlukan kajian semula yang segera. Kajian semula yang segera terhadap peruntukan undang-undang berkenaan taman perlindungan marin adalah diperlukan untuk diselaraskan dengan perjanjian antarabangsa pelbagai hala (MEA) yang telah ditandatangani. Turut didapati ialah walaupun Malaysia sudah dibimbing kemas oleh MEA ini, proses domestikasinya masih belum mencukupi.. Ini mungkin disebabkan oleh pembahagian kuasa persekutuan-negeri dibawah Perlembagaan Persekutuan. Untuk kajian terhadap TBMPA di TB, yakni objektif menyeluruh kajian ini, MPA Great Barrier Reef di Australia dan Great Lakes Amerika-Kanada telah digunakan sebagai penanda aras.. Sebuah perjanjian dua hala antara Brunei dan Malaysia dicadangkan bertujuan untuk: (i) melindungi alam sekitar TB, (ii) mempraktikkan prinsip bimbingan untuk mengimbangi perlindungan alam sekitar dan perkembangan ekonomi; dan (iii) memastikan Negara-negara melaksanakan kewajipan mereka di bawah triti-triti tersebut.. Manakala untuk hubungan antara Kerajaan Persekutuan dan negeri Sabah dan Sarawak, sebuah perjanjian antara kerajaan diolah dari model Australia telah dicadangkan untuk memberikan skop tugas yang jelas kepada setiap laras kerajaan. Cadangan-cadangan yang dikehendapkan didalam kajian ini boleh meningkatkan usaha perlindungan alam sekitar marin Malaysia terutamanya di TB, yang mungkin boleh digunapakai sebagai sebuah model untuk kerangka kerja perlindungan alam sekitar marin transnasional di masa hadapan.