



5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

Legislating Geospatial Information: the Malaysian case

Adibah binti Awang
Shahidah Mohd. Ariff
UTM Geo-law Research Group

Hypothesis

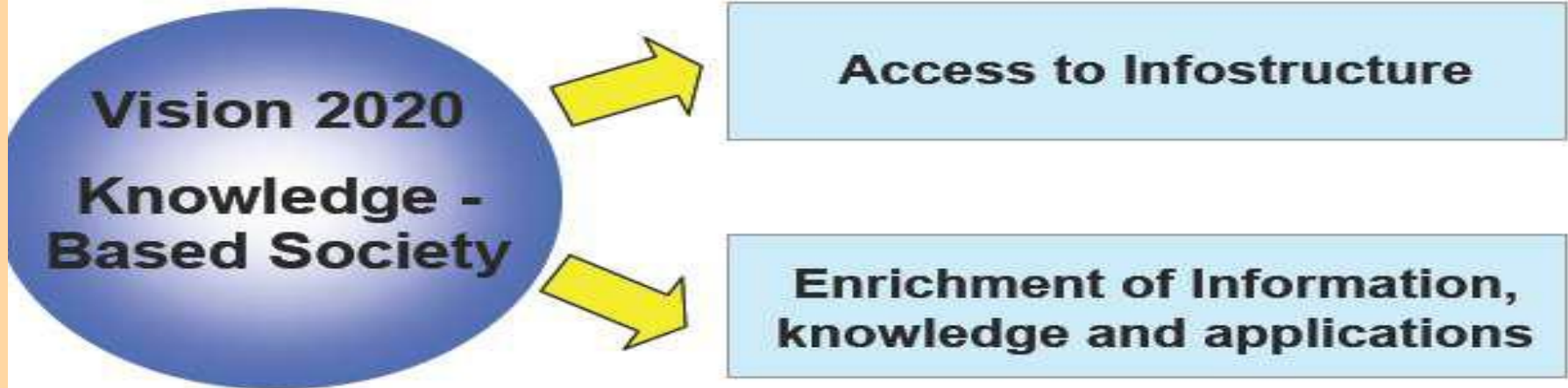
- The present unclear policy tends to impede **the development processes at all level in Malaysia**, whereby the access and dissemination of geospatial data (and other data & documents) are subject to various red tapes. Perhaps this inconvenience cause the existence of the **fear factor** amongst the public sector and the public at large in sharing geospatial data. Therefore this inconvenience should be uplifted through clear geospatial legislation to enable the creation of a dynamic, innovative and creative society as envisioned by the country transformation program.

5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

NATIONAL VISION

Malaysia has set a vision to move towards a knowledge-based society and economy

- **Where ICT as driver for restructuring of economy and employment**
- **Prerequisites include access to infostructure and development of Information, knowledge and applications**



Ref : Datuk Dr. Abdul Kadir bin Taib, Spatial Enablement in Malaysia & Towards Spatial Maturity, International Symposium on SEG & Society, 15-16 Feb. 2012

5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

Content

- Why Malaysia need to legislate geospatial information?
 - Do we have an information policy?
1. Access to information/data
 2. Sharing of information

5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

Content

Establishing the legal framework for geospatial information

- What is the legislation on information?
- What say the supreme law, the Federal Constitution of the land on information ?
- The disputed question is: in light of the current framework "is geospatial law really needed"?

Legislation supporting ICT development

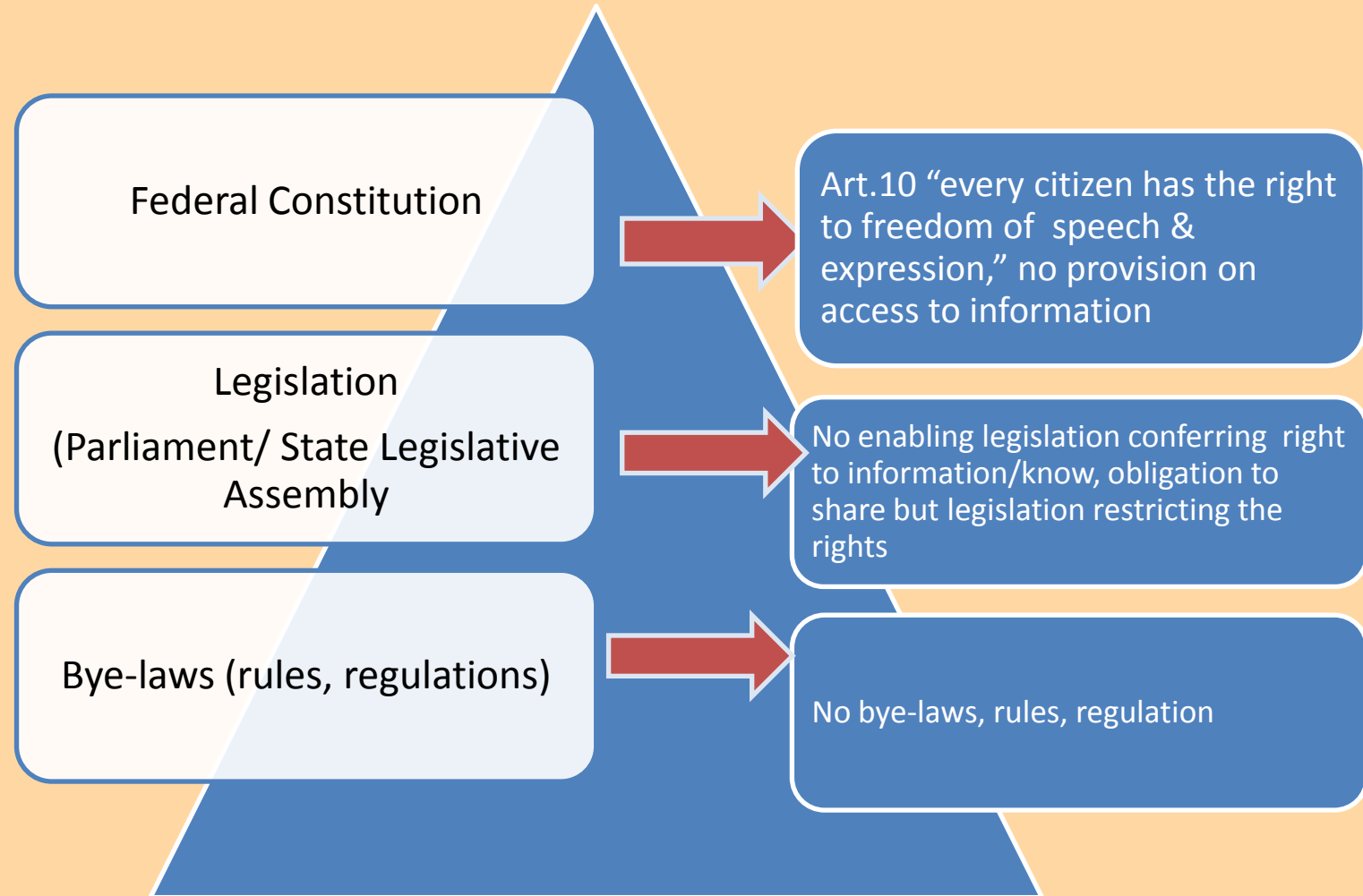
- Malaysian Communications & Multimedia Act 1998 (Act 589) : to establish the M'sian Communication & Multimedia Commission with powers to supervise, regulate, enforce communication & multimedia activities
- Digital Signature Act 1997 : regulate use of digital signatures
- Computer Crimes Act 1997 (Act 563): to provide for offences on misuse of computers
- Copyright Act 1987 (Act 332): law relating to copyright
- Personal Data Protection Act 2010 (Act 709) (not yet in force) : regulate the processing of personel data in commercial transactions

What is or Why legislation?/ law?/policy?

- Are the present circulars, standards, legislation adequate? Why the need legislate when we have circulars, standards, & also legislation to regulate geospatial activities?
- What is so unique about geospatial information that it need a specific legislation to manage it?

5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

The Legal Framework on Access to Information



5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

About “Rights”

- Article 19 Universal Declaration of Human Rights 1948 states :

“Everyone has the right to freedom of opinion & expression; this right includes freedom to hold opinions without interference & to seek, receive and impart information & ideas through any media & regardless of frontiers”

5th National Geographic Information Symposium (NGIS 5)
21-22 May 2012, Putrajaya

Article 10 Federal Constitution

- Acknowledge “the right to freedom of speech & expression” but silent on the second limb of Article 19 of the Universal Declaration i.e. “Right to receive & impart information & ideas...”
- Moreover, the right to freedom of speech is subject to restrictions (security, and public order)

On “Liabilities & Restrictions”

- The Official Secret Act 1972
“Cabinet documents, records of decisions & deliberations including those of Cabinet committees; State Executive Council documents, documents concerning national security, defence & international relations” are “official secret”.
- OS classified into 4 : top secret, secret, confidential & restricted

On Liabilities & Restrictions

- Criminal offence for divulging OS : mandatory jail time between 1- 7 years, the penalty for spying = life imprisonment
- OSA applies to all, citizen, PR & to persons who hold or have held at anytime held office in a public service in M'sia & have effect outside M'sia.
- Civil servants bound by the General orders & Administrative Guidelines, Clause 17(1) prevents officers from revealing information to the public or media without written approval

...on Restrictions

- Draft legislation for eg the National Geospatial Data Act : classified as an official secret until it is tabled in Parliament; even MP's do not have access to the draft or have access only under very ltd & restricted circumstances.

About Rights, Liabilities & Restrictions on Information

Rights

Liabilities & Restrictions

Access to information/
Right to Know/ Right to
disclose/disseminate
information

Official Secrets Act '72 :
limit access to
information deemed an
"official secret". Penalty :
imprisonment & fined

Printing Presses &
Publication Act 1984,
Sedition Act '49 : those
who release classified
info = criminal penalties

The comparison

	RIGHTS	LIABILITIES	RESTRICTIONS
LAND OWNERSHIP	GUARANTEED BY FC	QUIT RENT, RATES etc	NO MINING RIGHTS
ACCESS TO INFORMATION	?	CRIMINAL PROSECUTION	OFFICIAL SECRET : TOP SECRET, SECRET etc.

On Rights, Liabilities & Restrictions on Property

Rights

- Art 13 guarantee Right to Property
- To exclusive use & enjoyment of property
- To transfer, lease or charge
- To develop, partition, sub-divide, amalgamate

Liabilities

- To pay quit rent (Forfeiture)
- Assessment
- Premium
- Stamp Duty
- Real Property Gains Tax Act
- Levy

Restrictions

- Not to remove rock materials or extract mineral from land
- Subject to restriction in interest in land dealings
- Subject to condition & categories of land

Despite the legal discrepancy, MacGDI has done a fantastic job in managing & promoting development, implementation of her GDI as to put Malaysia amongst the few Asian countries that forefront development of SDI

MyGDI Policy & Guidelines

No.	Name	Purpose
1.	Development Administration Circular 1/97	Information on guidelines to the authorities at Federal, State & Local Authorities of formation of NaLIS.
2.	Development Administration Circular 1/2001	Guideline on Data Custodianship of land-related data
3.	MyGDI Implementation Circular 1/2005	Data Pricing Guideline
4.	MyGDI Implementation Circular 1/2006	From NaLIS to MyGDI
5.	First Amend MyGDI Imple Circular 1/2006	New MyGDI management structure
6.	MyGDI Implementation Circular 1/2008	Custodianship of Geospatial Data
7.	MyGDI Impementation Circular 1/2009	Dev of GDC at national, regional, State & Local
8.	MyGDI Implementation Circular 1/2012	Sharing & Disseminating thro MyGDI.

About the Circulars :

- Circulars applicable to public bodies & has no legal sanction (unless it is backed by a legislation)
- Not binding “Pemakaiannya adalah tertakluk kepada penerimaan oleh pihak berkuasa masing-masing” = optional
- No penalty or no liability arise for non-compliance or failure to obey guidelines

...still on Circulars :

- Aim to protect the interest, confidentiality and private information of the government.
- It is administrative in nature and not mandatory
- Definitely does not have authority to confer right to access and impose obligation to disclose data and data sharing

Security Instructions Circular of Classified Geospatial Document 1/2007

- In line with the OSA '72
- More exhaustive as compared to the OSA :
- Defined & distinguished the 4 categories of classified document : “top secret”, “secret”, “classified” & “restricted”
- Identify and ascertain the types of classified geospatial document under Appendix II

CIRCULAR NO.1/2007

- The Circular is a supplement to the Security Directives Book issued by the Cabinet with the aim of imposing restriction on Classified Geospatial Document involving the country's security and defense.
- Provisions on enforcement (Clause 24) refers to power of police to confiscate classified geospatial documents under the OSA.

The Issues

- Whether the existing legal framework is adequate in supporting our vision of moving towards a knowledge-based society & economy?
- Whether the prerequisites :access to info-structure and development of Information fulfilled?

Assessing the current legal/ policy framework to ascertain whether they ACHIEVE the “enabling data sharing”

	RIGHTS		LIABILITIES/ OBLIGATIONS	
1.	Aim at data sharing between public bodies for public service	√	Obligation to share – sharing as a default	×
2.	Access by citizen	?	Obligation to show	×
3.	Re-use by private sector	?	Obligation to use – authentic source	×

Conclusion

There's a need to further define and enhance the right of expression under Article 10 of the Federal Constitution so as to include the right to freedom of information and also, obligation to disclose information.

...Conclusion

Balance is needed ie protection of privacy,
intellectual property rights, national security

VS

Freedom of Information (FOI)

Exception to the FOI should be interpreted
restrictively

conclusion

- the need for a knowledge-based society for the development of our beloved country is surely a MUST because we believe that perfection come with freedom of expression and surely freedom of information. The imbalances between the rights and liabilities in our information law need to be tackle. The drafting of the National Geospatial Data Act will hopefully address issues on the right of information and obligation to disclose information

Wasallam & Thank You!

adibah@utm.my

shahidah@utm.my