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Commentary

Malaysia water services reform: Legislative issues

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The latest attempt by the Malaysian government to restructure its water sector has managed to promulgate two important acts, the Suruhanjaya Perkhidmatan Air Negara (SPAN) Act (Act 654) and the Water Services Industry Act (WSIA/Act 655); these also complicate the governing of water services and water resources in the country as they affect the sovereignty of a state's land and water issues. In Malaysia's federated system of governance, water resources are placed fully within the purview of each State's government, as stated in the Waters Act 1920 (Revised 1989), while water services are straddled across the purview of both the State and Federal government (Water Supply Enactment 1955). Any reforms will remain problematic unless further analysis is carried out on the available legislation that directly impacts said reform, particularly the Waters Act and Water Supply Enactment. For example, when the Waters Act stipulates "the entire property in and control of all rivers in any State is vested solely in the Ruler of that State", it is clear that the Federal Government has no authority whatsoever over water resources of any states. The Water Supply Enactment 1955 (adopted by several States) further empowers the state's water supply authorities to supply water to domestic and commercial consumers. Other legislation that has been enacted to govern land and water issues in the country include the Geological Act 1974 on groundwater abstraction and the Environmental Quality Act 1974 (incorporating all amendments up to 1st January 2006) on some aspects of the environmental impact of groundwater abstraction. While these legislations seemed to provide adequate coverage on the governance of groundwater abstraction; treatment, distribution and wastewater management, which form the water supply value chain in the country, are not covered. Similarly, the Sewerage Services Act 1993 covers only wastewater governance issues rather than the whole value chain or process. The fact that upon independence in 1957 the Malaysian constitution accorded separate jurisdiction for the state and federal authorities on land and water issues has given rise to various points of contention when dealing with water policy reform, particularly the role, power and ownership of water resources between the state and the federal governments. In conclusion, the problems observed in Malaysia's water services industry reform are mainly with regard to legislation. In-depth analysis of how the SPAN Act and WSIA impact available legislation and how these legislations can create an integrated water resource management system that works on both Federal and State levels are crucial. It is thus fundamental for legal regimes for water resources to support the legal regimes for water services. Only then, will the Federal government be able to take appropriate steps in restructuring the country's water governance in its entirety.

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