

# Enhancing Legal Frameworks for the Conservation of Tangible Cultural Heritage in Thailand: Problems and Solutions

การเสริมสร้างโครงสร้างทางกฎหมายเพื่อการอนุรักษ์มรดกทางวัฒนธรรมที่จับต้องได้ในประเทศไทย: ปัญหาและแนวทางแก้ไข

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## Abstract

Government agencies in various countries use legal tools to conserve and manage tangible cultural heritage effectively. Laws, measures, and standards ensure operations adhere to conservation principles and maintain consistency. In Thailand, legal tools for protecting tangible cultural heritage have evolved over six decades, particularly under the Ancient Monuments Act. However, these tools are inefficient due to two critical issues. Firstly, there is a lack of comprehensive protection, inconsistent laws, and inadequate enforcement, especially for heritage of low or moderate value, privately owned, or outside protected areas. Secondly, implementation is highly fragmented, involving multiple agencies and resulting in complicated and disjointed operations. Amending each law individually is unlikely to be effective. One of the potential solutions is to create a primary law for the inclusive conservation and management of tangible cultural heritage. This law should harmonise and connect existing laws, addressing all types, values, and forms of tangible cultural heritage regardless of ownership. It is crucial to establish mechanisms that decentralise operations to local levels and encourage participation from various sectors. Moreover, developing conservation standards is essential to ensure the consistent use of these instruments.

หน่วยงานภาครัฐในประเทศต่าง ๆ ใช้เครื่องมือทางกฎหมายเพื่ออนุรักษ์และจัดการมรดกทางวัฒนธรรมที่จับต้องได้อย่างมีประสิทธิภาพ กฎหมาย มาตรการ และมาตรฐานช่วยให้การดำเนินการเป็นไปตามหลักการอนุรักษ์และสอดคล้องกัน ในประเทศไทย เครื่องมือทางกฎหมายสำหรับการคุ้มครองมรดกทางวัฒนธรรมที่จับต้องได้ได้รับการพัฒนามานานกว่าหกทศวรรษ โดยเฉพาะเครื่องมือทางกฎหมายภายใต้พระราชบัญญัติโบราณสถาน อย่างไรก็ตาม เครื่องมือเหล่านี้ยังไม่มีประสิทธิภาพเพียงพอ เนื่องจากประเด็นปัญหาหลักสองประการ ประการแรก คือ การขาดการคุ้มครองมรดกอย่างครอบคลุม กฎหมายไม่เกิดความสอดคล้องกัน และการบังคับใช้กฎหมายไม่เพียงพอ โดยเฉพาะมรดกที่มีคุณค่าน้อยหรือปานกลาง มรดกที่เป็นของภาคเอกชน หรืออยู่นอกพื้นที่คุ้มครอง ประการที่สอง คือการดำเนินการที่มีความกระจัดกระจาย มีหน่วยงานรับผิดชอบงานอนุรักษ์ด้านต่าง ๆ หลายแห่ง ส่งผลให้กระบวนการทำงานมีความสลับซับซ้อนและไม่เชื่อมโยงกัน การแก้ไขปัญหาดังกล่าวโดยแก้ไขกฎหมายแต่ละฉบับไม่จำเป็นจะเป็นวิธีการที่มีประสิทธิภาพ หนึ่งในทางออกที่มีความเป็นไปได้ คือการสร้างกฎหมายแม่บทเพื่อการอนุรักษ์และการจัดการมรดกทางวัฒนธรรมที่จับต้องได้ครอบคลุม กฎหมายนี้ควรประสานและเชื่อมโยงกฎหมายที่มีอยู่เดิม เพื่อจัดการมรดกทางวัฒนธรรมที่จับต้องได้ทุกประเภท ทุกระดับคุณค่า และทุกรูปแบบการถือครอง สิ่งที่สำคัญคือต้องสร้างกลไกที่กระจายการดำเนินงานไปยังระดับท้องถิ่นและส่งเสริมการมีส่วนร่วมจากภาคส่วนต่าง ๆ นอกจากนี้ การพัฒนามาตรฐานการอนุรักษ์เป็นสิ่งสำคัญเพื่อให้แน่ใจว่าการใช้เครื่องมือเหล่านี้เป็นไปอย่างสอดคล้องกัน

**Keywords:** legal framework, tangible cultural heritage, cultural heritage conservation, conservation law, solutions | โครงสร้างทางกฎหมาย มรดกทางวัฒนธรรมที่จับต้องได้ การอนุรักษ์มรดกทางวัฒนธรรม กฎหมายอนุรักษ์ แนวทางการแก้ปัญหา

## Introduction

According to current international conservation principles, cultural heritage conservation emphasises diverse values. The scope of heritage has been expanded to include both tangible and intangible cultural heritage, as well as cultural heritage related to natural heritage. Additionally, the balance and sustainability in the use of cultural heritage are also taken into consideration. To achieve these objectives, there are processes to allow all sectors of society to participate in the operations, and the consideration of values, authenticity, and operations based on varying cultural contexts is respected. These conservation principles have been adapted into policy guidelines and legal instruments in many countries worldwide to ensure that operations are aligned with international conservation principles while fitting into the local context.

The application of international conservation principles to the conservation of cultural heritage in Thailand has continued for more than six decades. Since the 1960s, Thailand has enacted national-level heritage conservation laws derived from international conservation principles. Subsequently, several legal instruments and mechanisms have been developed for the protection of urban tangible heritage. Significant examples include the legal instruments used for the conservation of “Rattanakosin Area” in the 1980s and the “Old Town” conservation system used nationwide since the late 1990s. These efforts have led some experts and practitioners to believe that the existing legal instruments for conserving and managing historically valuable structures and sites in Thailand are adequate and appropriate.

However, the current situation in Thailand shows that there are still inappropriate demolitions, alterations, and uses of valuable structures and sites, as well as a lack of legal instruments and measures to promote the conservation and use of these valuable buildings. Several studies have attempted to understand the issues related to the legal instruments used for managing tangible heritage in Thailand. Among them, Pimonsathean's research highlights the insufficient laws for protecting tangible heritage not registered as national ancient monuments. Heritage buildings and sites that are often disregarded are those of local community-level value, particularly those in private ownership. Such heritage faces uncertainty in gaining protection under the Ancient Monuments Act. Moreover, heritage sites such as historic urban communities are often neglected. This is because the Ancient Monuments Act is primarily drafted to apply on single buildings or groups of historic buildings, rather than dealing with large areas. (Pimonsathean 2012: 114; 2018: 171).

Extending from previous studies, this study on "Legal and Government Policy Guidelines on Resolving Cultural Heritage Management Challenges" was conducted to gather information on laws and government policies related to the conservation and management of tangible cultural heritage in Thailand, and the problems and obstacles encountered based on empirical data from study area. This article presents a part of that research, showing the complexity of using multiple sets of laws that were not originally designed for the conservation of cultural heritage, but have been applied to conserve and manage tangible cultural heritage. The article highlights the various problems and limitations of these laws and reaffirms issues observed in the study areas. Finally, this article proposes recommendations to address these problems, with an aim towards the potential improvement of relevant legal instruments.

## Research Steps and Methods

The first step is a literature review on the principles of conservation and management of cultural heritage. This is necessary for analysing the problems that arise, linking to the international principles that form the basis of the ideas of a value-based approach to conservation, and the development of these principles into legal instruments used in various countries. This section also reviews the laws used for conserving and managing tangible cultural heritage in Thailand.

The second step involves interviewing and organising focus group discussions with experts related to the supervision and implementation of the laws.

The third step is collecting data from study areas to confirm the fundamental problems of the laws. The selected study areas include the old towns of Phayao and Songkhla. These represent the areas under the "Old Town" system, showcasing the legal instruments and mechanisms used to protect and manage valuable structures and sites in different contexts. The Phayao Old Town represents an area protected by the Ancient Monuments Act and other laws that facilitate the functioning of the "Old Town" system. Other provinces, like Songkhla and Phuket, have local ordinances under the Building Control Act that regulate building density, appearance, and height. While these ordinances are not designed specifically for heritage conservation, they are the only available tools for managing historic buildings not recognised as national monuments. Phayao, however, does not yet have such a local-level regulation in place. (Phayao Province Office of Natural Resources and Environment 2019; Songkhla Province Office of Natural Resources and Environment 2017). Data collection methods in this step include observing operations and interviewing stakeholders in the study areas.

The fourth step is an analysis of problems encountered in using legal instruments to conserve and manage valuable structures and sites. This involves examining the problems arising from the use of each set of laws and the issues in the overall legal mechanism. Finally, the last step is summarising and presenting recommendations for improving legal instruments.

### *Structure of the Article*

Based on the objectives and research methods mentioned above, this article is divided into five sections as follows: the first section reviews the literature related to the principles of conservation and management of cultural heritage and key issues that have led to the creation of legal instruments. The second section presents the key content of each set of laws and their mechanisms for protecting and managing tangible cultural heritage. The third section highlights the problems and limitations of each set of laws and confirms the issues found in the study areas. The fourth section presents an analysis of the overall problems of the legal instruments. The final section presents recommendations for resolving the identified problems.

## Literature Review

Over time, the approach to cultural heritage conservation has evolved significantly, reflecting a deeper understanding of cultural values and the changing needs of communities. Initially, the focus was on conserving the heritage fabric using a material-based approach. However, since the second

half of the 20th century, a paradigm shift recognising the importance of heritage attributes and values has led to a value-based approach in conservation. This holistic perspective has expanded the scope of heritage sites to include surrounding landscapes, acknowledging the interdependence between sites and their contexts. This broader approach to cultural heritage management considers the use and embraces the concept of “dynamic change,” redefining “conservation” as “accepting change” while aiming to minimise the loss of cultural values (Rodgers & Hudson 2011: 186-187).

Building on the value-based approach that provides the conceptual foundation, the Historic Urban Landscape (HUL) approach puts it into practice and applies them at the urban scale. The HUL approach was suggested by supranational policies, such as the Vienna Memorandum on World Heritage and Contemporary Architecture – Managing the Historic Urban Landscape, and the Recommendation on the Historic Urban Landscape (ICOMOS 2005; UNESCO 2011), to integrate heritage management and urban development. Building on the value-based approach that provides the conceptual foundation, the Historic Urban Landscape (HUL) approach puts it into practice and applies them at the urban scale. Consequently, heritage conservation and management have expanded and shifted to other policies, addressing the complexity of integration in a multilevel and multidisciplinary setting (Veldpaus and Rodgers 2017: 67). The value-based and landscape approaches in conservation have significantly influence the definition and categorisation of heritage. Heritage extends beyond "monuments" or "traditions" to encompass various forms, characterised by multiple attributes and values defined by diverse stakeholders (ibid.). Heritage management thus better addresses the complexities and challenges of conserving cultural heritage for future generations within the wider goals of sustainable urban development (Ginzarly, Houbart, and Teller 2018: 1000). Moreover, the tools for managing heritage resources are diversified, incorporating various management schemes beyond just regulatory frameworks to control heritage fabric and the designation of heritage used solely for conservation benefits.

In various countries, management processes and legal tools have been developed to support this approach. Notable examples include the legal instruments in the United Kingdom, the United States, and Japan. These countries have established diverse sets of laws to manage both national and local heritage. They have also created tools to decentralise power to local governments, enabling them to manage local heritage in collaboration with the community. For instance, in the UK, the Town and Country Planning Act empowers local authorities to conserve and manage heritage and designate conservation areas (Historic England. n.d.). In the US, the National Historic Preservation Act outlines roles and responsibilities for a federal historic preservation programme and authorises various tools for preservation activities (National Park Service (n.d.)). In Japan, cultural assets are classified under the Law for the Protection of Cultural Properties (Agency for Cultural Affairs, 2015), with power decentralised to local authorities for management through town planning instruments (Hohn 1997: 219).

These countries have continuously developed tools for managing cultural heritage, resulting in comprehensive laws and management plans that cover a wide range of cultural heritage. They clearly defined the terms, types, and levels of significance of cultural heritage and conservation processes. They established systems to protect registered heritage while providing legal tools and measures to protect and enhance lower-value, local heritage found in a variety of categories. The management integrates heritage with development plans and various policies, addressing the use of

heritage for benefits. Specific agencies are designated to manage heritage, providing the public with useful information to manage heritage themselves, subject to approval and guidance from oversight agencies.

## **Tangible Heritage Conservation Laws in Thailand: Objectives, Applications, and Authorities**

In Thailand, the primary law used to protect highly valuable buildings and sites designated as “registered ancient monuments” is the Act on Ancient Monuments, Antiques, Objects of Art, and National Museums (the Ancient Monuments Act). However, for structures or sites of value that do not meet the criteria for ancient monuments or exceed them due to other considerations, there are currently no clear definitions or criteria for protection and standards for conservation. Additionally, there is no specific law dedicated to the conservation and management of valuable structures and sites beyond those classified as ancient monuments. The protection and management of such structures and sites involve the use of multiple laws as tools<sup>1</sup>. These laws include:

- 1) Enhancement and Conservation of National Environmental Quality Act, administered by the Ministry of Natural Resources and Environment.
- 2) The State Administration Act, which drives the planning and operations mechanism in the “Old Town” system, managed by specialised agencies established through the Prime Minister's Office.
- 3) The Building Control Act.
- 4) The Town Planning Act.

The last two laws are administered by the Department of Public Works and Town & Country Planning, Ministry of Interior. The key contents and operational mechanisms of each set of laws are described as follows.

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<sup>1</sup> The five laws selected for study here are those applied to protect and manage structures and sites excluded from registered ancient monuments. The laws not reviewed are those directly involved in conservation practices. Examples of such laws include the Constitution of the Kingdom of Thailand of 2001 [B.E. 2550]. The Constitution emphasises the importance of the public and communities in managing natural resources and the environment, as reflected in several articles. For example, Article 66 grants communities the right to conserve and restore local customs, traditions, wisdom, and cultural heritage, and to participate in sustainable resource management. Additionally, Article 289 mandates local administrative organisations to preserve local arts, customs, wisdom, and cultural heritage (The Constitution of the Kingdom of Thailand B.E. 2550, Section 66 and Section 289).

Another set of laws not included in this study are those related to the decentralisation of power to local administrative organizations, enacted in 1999. These laws empower local administrative organisations, such as the Bangkok Metropolitan Administration and municipalities, to issue local ordinances under relevant acts, such as the Environmental Act and the Building Control Act (Pimonsathean 2014: 115-116).

A law that is not included here is the Enhancement and Conservation of Intangible Cultural Heritage Act of 2016 [B.E. 2559]. This law aims at creating policy and plan, inventory, protect, and enhance intangible cultural heritage and local wisdom in Thailand. Department of Cultural Promotion in Ministry of Culture is authorised this law (Enhancement and Conservation of Intangible Cultural Heritage Act B.E. 2559, Section 5 and Section 100).

**Ancient Monuments Act**

The main objective of the Act on Ancient Monuments, Antiques, Objects of Art, and National Museums of 1961 [B.E. 2504], as last amended by the Act on Ancient Monuments, Antiques, Objects of Art, and National Museums (No.2), B.E. 2535 (1992) is to protect built heritage and historic areas classified as “ancient monuments” (or *boransathan* in Thai). The earlier legislation that influenced subsequent laws was the royal decree “Announcement on the Management and

**The Existing Laws for Conservation of Tangible Cultural Heritage in Thailand**

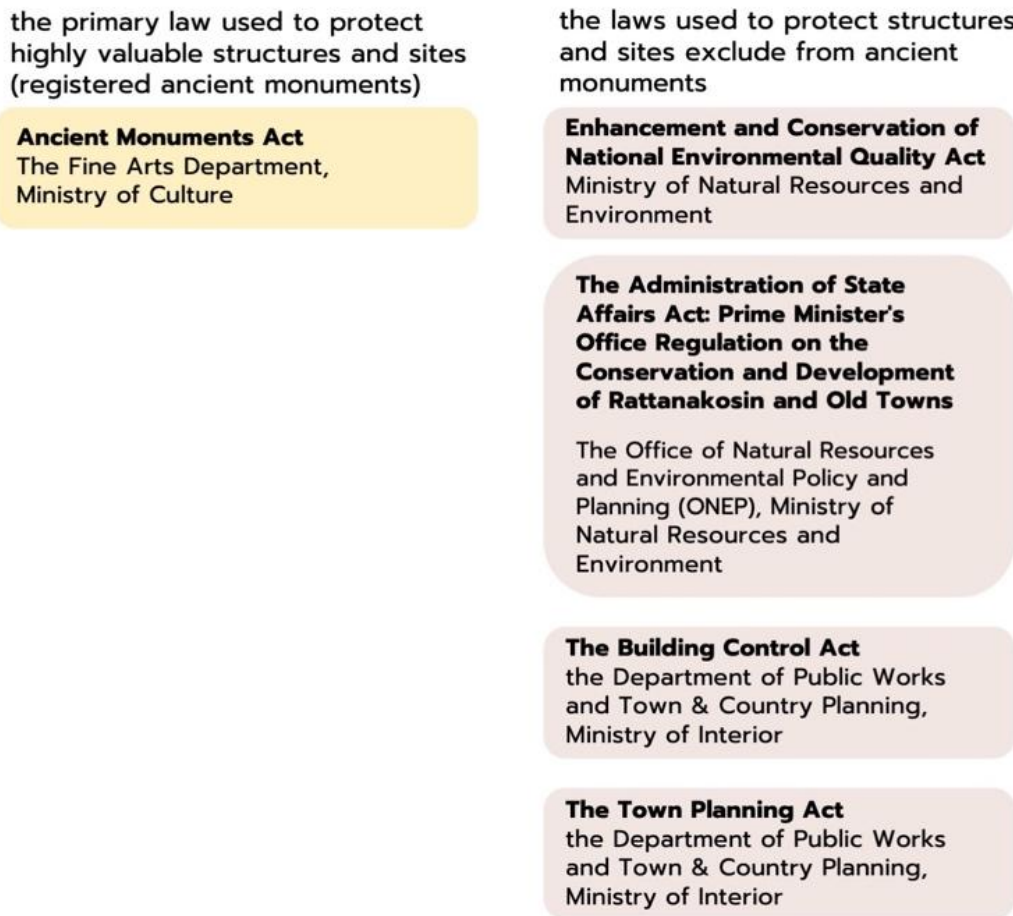


Fig. 1 Diagram illustrating the laws for the conservation of tangible cultural heritage in Thailand. Source: Illustration by Issarathumnoon, 2024

Restoration of Antiquities,” issued by King Rama VI in 1923. This decree introduced international conservation concepts by highlighting the cultural and scientific significance of “ancient things<sup>2</sup>.” The decree established conservation practices, including the inspection and identification of monuments, monitoring, conservation, and reporting (Sakulpanich 2012: 87-88). Furthermore, the

<sup>2</sup> The decree stated that “ancient things such as stupas and various artifacts created by kings and expert artists in the past” served as “chronicles and tools for investigating knowledge of the past for the benefit and glory of the country.”

King graciously ordered the restructuring of the administration of arts and culture and established a clearly defined agency responsible for the safeguarding of historical sites, namely the Committee of the *Vajirayana* Library of the Capital. The work of this agency was required to be reported to the king (Chungsiriarak 2012: 117-118).

Subsequently, the first comprehensive Act on Ancient Monuments, Antiques, Objects of Art and National Museums was passed in 1934<sup>3</sup>. This Act introduced new conservation terminology based on international conservation principles, particularly emphasising “Anti-restoration,” while reflecting traditional conservation practices (Chungsiriarak 2012: 119). It focused on the protection of tangible heritage including antiques, ancient monuments, objects of art, and museums. The responsible bodies for the conservation were systematically specified as the Royal Institute and the Fine Arts Department.

The enactment and implementation of this Act led to revisions in 1943, 1961 and most recently, in 1992 which remain in force today. The main objectives, definitions, and operations in the Act of 1992 have largely maintained those of its predecessors. The Act aims to ensure that the ancient monuments in Thailand are safeguarded from physical alterations that could damage or devalue them. It defines “ancient monument” as: “immovable property which, by its age, the characteristics of its construction, or the evidence related to its history, is beneficial for artistic, historical, or archaeological purposes.” The term “ancient monument” encompasses buildings, physical elements, areas, or sites, including archaeological sites, historical sites, and historical parks.<sup>4</sup> (Ancient Monuments Act B.E. 2504, Section 4)

The Act specifies “conservation” as prohibiting any actions that would destroy the physical elements of the ancient monument. It states: “No person shall repair, change, demolish, add to, destroy, move an ancient monument or any part thereof, or excavate anything, or construct buildings within the ancient monument area except by order of the Director-General, or if a permit has been obtained from the Director-General.” (Ancient Monuments Act B.E. 2504, Section 10)

Subordinate legislation derived from the Ancient Monuments Act, specifically the Regulation of the Fine Arts Department on the Conservation of Ancient Monuments of 1985 [B.E. 2528], focuses on conserving highly significant cultural heritage at the ancient monument level. It defines “conservation” as maintaining value and specifies three conservation methods focused on preservation: maintenance, restoration, and rehabilitation<sup>5</sup>. The regulation also states that “the conservation process must include surveying and recording information before and during operations.” (Regulation of the Fine Arts Department B.E. 2528)

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<sup>3</sup> This legislation was enacted one year after the establishment of a democratic government to administer the country, along with policies to promote arts and culture for educational, political, and economic benefits.

<sup>4</sup> In the legislation and the practice, “ancient monument” refers to “registered ancient monuments.” Structures and sites that are valuable and meet the criteria of the ancient monuments as defined in the Act, but are not registered, are also protected under the Act. However, the penalties for destruction or alteration are less severe for unregistered monuments compared to registered ones.

<sup>5</sup> “Maintenance” means preserving it in its original condition and preventing further damage; “restoration” means returning it to its former state; and “rehabilitation” means repairing and improving its shape to be harmonised with but not replicate the original. (Regulation of the Fine Arts Department B.E. 2528)

The conservation terminologies used in the Ancient Monuments Act and its subordinate legislation were evidently adopted from international charters, particularly the Venice Charter (International Charter for the Conservation and Restoration of Monuments and Sites, 1964), which had been developed from previous charters such as The Athens Charter for the Restoration of Historic Monuments of 1931. Aligning terminologies in the Act with international charters also coincided with Thailand becoming a chapter of the International Council on Monuments and Sites (ICOMOS) in 1985. (Pimonsathean 2018: 169; Office of Natural Resources and Environmental Policy and Planning 2011: 15)

The Ancient Monuments Act grants the Director-General of the Fine Arts Department (FAD) the authority to designate areas as ancient monuments through announcements in the Royal Gazette. This Act also grants the FAD the authority to control, permit, and suspend construction within these designated areas. Examples of conservation works undertaken by the FAD under this Act include the restoration of the Grand Palace, major temples, and forts in Krung Rattanakosin, the heritage core of Bangkok, particularly during the mid-1980s in preparation for the Rattanakosin Bicentennial Ceremonies.

### ***Enhancement and Conservation of National Environmental Quality Act***

The primary objective for the Enhancement and Conservation of National Environmental Quality Act of 1992 [B.E. 2535] (amended in 2018 [B.E. 2561]) (the Environmental Act) is to oversee environmental areas through the declaration of “Environmental Protection Zones”. It regulates land use and preserve natural conditions, ensuring they do not negatively impact ecosystems or the value of environmental aesthetics (Enhancement and Conservation of National Environmental Quality Act B.E. 2535, Section 43 and Section 44).

Since the Environmental Act focuses on conserving the natural environment, the definitions provided in the Act predominantly pertain to natural environmental aspects. For instance, the term “Artistic Environment” is used broadly to denote areas of cultural significance. This term refers to environments that hold value in terms of art, culture, history, archaeology, and technology, which are associated with human creations or designations from both the past and present. It identifies two main components: the “artistic works” and “the related environment. However, it lacks specific statements regarding culturally or historically valuable attributes and primarily focuses on regulating general physical aspects such as spatial layout, building height, and the proportion of open space.

The Enhancement and Conservation of National Environmental Quality Act incorporates two types of subordinate legislation to aid in its implementation. The first type is ministerial regulations, which designate specific areas as Environmental Protection Zones. These regulations are issued under the authority of the Minister of Natural Resources and Environment, with the approval of the Environmental Board. The second type is ministerial announcements, which establish environmental protection measures within designated areas. These announcements are issued to implement protective measures and address problems in areas identified as “Pollution Control Zones” under this Act, as well as “Conservation Zones,” “Comprehensive Town Planning Zones,” or “Specific Town Planning Zones” under the relevant primary laws. In cases where areas require immediate resolution due to severe environmental quality issues, the Minister can declare the



designation of “Environmental Protection Zones” in the Royal Gazette. This declaration includes the establishment of measures and timelines for area protection, supervised by the National Environmental Board and provincial environmental boards (Enhancement and Conservation of National Environmental Quality Act B.E. 2535, Section 45).

***The Administration of State Affairs Act: Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns***

The Royal Decree on the Administration of State Affairs of 1991 [B.E. 2534] (amended in 2015 [B.E. 2558]) is related to the conservation of valuable structures and sites. This connection is established through provisions regarding the organisation of central administration, which grants the Prime Minister the authority to issue regulations with the approval of the Cabinet (State Administration Act 1991, Section 11(8)). One such regulation is the Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns of 2003 [B.E. 2546] (revised in 2021 [B.E. 2564]). The primary objective of this regulation is “to ensure that Rattanakosin and old towns remain a cultural heritage that perpetuates the nation's great artistic and cultural prosperity” (Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns B.E. 2534).

This regulation adopts definitions from the Environmental Act, including the term “Artistic Environment” and definitions for areas such as “Rattanakosin Area,” “Old Towns,” and “Traditional Communities.” The regulation classifies Old Towns into different types and delineates zones and urban components, primarily emphasising physical elements<sup>6</sup> (Office of Natural Resources and Environmental Policy and Planning 2020: 52-56). Initially, the definitions focused on the physical components of ancient cities, referencing the Historic Sites Act, but avoided overlapping with existing terms like “historical parks,” which are under the Fine Arts Department's jurisdiction. The current definition of “old towns” in the Prime Minister's Office Regulation has been broadened to encompass dynamically changing urban areas, as well as new urban areas overlaying traditional core zones. It also includes “cultural landscapes” (Kirdsiri 2021). This regulation chiefly defines and classifies tangible cultural heritage by considering the characteristics of physical elements, the value of historical and archaeological evidence, as well as usability. Furthermore, the primary consideration is on the components of the city, with less emphasis on the characteristics of buildings and sites of cultural value that are closely related to the community.

The law establishes and defines the roles and responsibilities of the Rattanakosin and Old Towns Committee. This committee is empowered to formulate policies, designate areas, and develop master plans for the conservation and development of Rattanakosin and old towns. Additionally, it appoints subcommittees for individual old towns to draft and implement these master plans. The Office of Natural Resources and Environmental Policy and Planning (ONEP), a department under the Ministry of Natural Resources and Environment, serves as the secretariat for this committee.

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<sup>6</sup> Based on physical characteristics criteria, Old Towns are classified into four types: Type 1: Old towns that lack physical evidence clearly indicating the structure of the historical town. For example, “ancient communities” where archaeological evidence shows settlement. Type 2: Old towns with physical evidence that indicates the structure of the historical town and monuments, but which are now “ancient towns” with little or no current inhabitants. Type 3 and Type 4: Both have physical evidence like Type 2 but are “ancient towns” that are still inhabited and continuously used. Type 3 refers to small urban communities, while Type 4 refers to large urban communities (Office of Natural Resources and Environmental Policy and Planning 2020: 53).

### ***The Building Control Act***

The primary objective of the Building Control Act of 1979 [B.E. 2522] (amended in 2017 [B.E. 2560]) is to regulate the construction of buildings regarding their characteristics, size (shape, proportion, and area), the construction area (land size, open space, setback), construction methods, and construction prohibitions, with considerations for structural integrity, fire prevention, safety, and the health of users (The Building Control Act B.E. 2522, Section 8).

This Act is employed as a tool for conserving and managing historically significant buildings and areas through two main methods. First, the Act is used as a regulatory tool when property owners seek permits to adapt, extend, or modify buildings, processed through local administrative organisations. Any work related to building adaptation, extension, and modification relies on this Act since no law specifically aimed at conservation works. However, as this act focuses on safety during construction and building use, terms, such as adaptation, extension, or modification, do not align with conservation terminologies and do not differentiate between valuable buildings and ordinary structures. Therefore, it lacks suitable methods and processes to conserve buildings of significant historical or cultural value. The second approach to apply legal tools under the Building Control Act involves implementing ministerial regulations and local ordinances issued under the Act. For example, there are ministerial regulations for various areas in Rattanakosin, and local ordinances based on the Building Control Act, such as the Chiang Mai Municipality Ordinance of 2014 and the Songkhla Municipality Ordinance of 2017.<sup>7</sup>

### ***The Town Planning Act***

The primary objective of the Town Planning Act of 1975 [B.E. 2518] (amended in 1982 [B.E. 2525] and 1992 [B.E. 2535]) is to enhance the efficiency and benefits of urban planning and land use for the public, encompassing economic, social, resource, and environmental aspects. To achieve this goal, the Act divides urban planning into two key components: the Land Use Policy Plan and the Land Use Designation Plan. The Land Use Policy Plan serves as a comprehensive framework guiding development activities within designated areas and includes national policy plans, regional policy plans, and provincial policy plans. The Land Use Designation Plan provides detailed recommendations for land use and development, considering the specific characteristics and requirements of each area. It includes comprehensive town plans and specific town plans.

Comprehensive town plans are employed to conserve and promote valuable areas by designating them as “Art and Cultural Conservation Zones.” This approach regulates these areas under urban planning laws to safeguard valuable structures and buildings from the pressures of urban development (Town Planning Act B.E. 2518, Section 4). Notably, the comprehensive town plan process involves decentralising power to local authorities, enabling the alignment of the plan with local needs and preferences.

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<sup>7</sup> In formulating subordinate legislation under the Building Control Act, the Minister, based on the recommendations of the Director-General of the Department of Public Works and Town & Country Planning, issues ministerial regulations or announcements by the Ministry of Interior. Examples include ministerial regulations for various areas in Rattanakosin. Additionally, local administrative authorities issue local ordinances, such as municipal ordinances.

## **Problems and Limitations in the Practical Application of Each Law**

Based on the key points and the responsible agencies for each law previously discussed, this section will illustrate the problems and limitations encountered in the practical application of these laws. The issues discussed in this part are based on document reviews and the analysis of interview and focus group data. Additionally, specific issues collected from the study areas, the old towns of Phayao and Songkhla, help confirm problems that exist in these areas and provide a deeper understanding of their causes and the impacts resulting from these issues.

### ***Ancient Monuments Act***

Regarding the application of the Ancient Monuments Act and the Regulation of the Fine Arts Department, a key problem is the lack of clear definitions, categories, and assessment criteria for tangible cultural heritage. Under these existing laws, the definition of “Ancient Monument” does not encompass all types of tangible cultural heritage. In practice, the determination of whether a building is an ancient monument depends on the discretion of the committee under the Director-General of the Fine Arts Department. Although a system for evaluating monument exists, the process is carried out only on problematic and disputed sites, or when sites are undergoing the registration process. Not every tangible heritage asset has been evaluated using these same criteria.

Another problem is the lack of manpower and budget in the Fine Arts Department to manage such a large number of ancient monuments. (Sakulpanich 2012: 89) Currently, the classification system to distinguish ancient monuments of high or national significance from those of lesser or local significance is not clear. As a result, almost all ancient monuments fall under the responsibility of the Fine Arts Department. Moreover, the centralised decision-making process for conservation works within the Fine Arts Department causes delays, due to the tedious steps in confirming the status of ancient monuments, designating them, and approving architectural conservation plans submitted by regional offices of the Fine Arts Department, local administrative organisations, or private sector agencies. (Poshyanandana 2021) Since 2003, the Fine Arts Department has begun transferring the task of maintaining ancient monuments to local administrative organisations in Bangkok and other regions. However, this process has faced significant challenges.<sup>8</sup> The Fine Arts Department requires local agencies to have knowledgeable personnel in conservation, adhere to specific procedures, and submit approval requests to the Fine Arts Department. Unfortunately, local agencies lack the readiness and personnel to meet these criteria. (Praichanchit 2005: 5-6)

The study areas illustrate the problems in applying the Ancient Monuments Act, particularly its application to privately owned buildings. In Songkhla Old Town, the ancient monuments status for numerous historical row houses remains ambiguous, resulting in a lack of protection. Instead, these buildings are regulated by other laws, such as those under the Building Control Act, which are unsuitable for preserving and controlling modifications to historical buildings. Additionally,

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<sup>8</sup>In 2020, the Fine Arts Department sent a document to the Department of Local Administration outlining the details of conservation work and empowering local agencies to undertake the maintenance of ancient monuments and sites at all levels. These agencies are authorised to carry out the conservation of monuments and sites of local significance. Conservation work includes basic repairs, reinforcement to prevent collapse, preservation to maintain current conditions, consolidation to ensure stability, restoration, reconstruction, analysis, and adaptation (Announcement of the Fine Arts Department: Transfer of the Responsibility for the Maintenance of Ancient Monuments to Local Administrative Organisations B.E. 2563)

business owners in Songkhla view the application of the Ancient Monuments Act as restrictive, particularly in terms of usage rights and building adaptation. One hotel owner noted that when a building is designated as a national monument, any repair or modification must be reported to the Fine Arts Department for approval. The approval process is often complicated and time-consuming, and there is no financial support provided by the government. (Chaivanich 2022)

In Phayao Old Town, urban planning experts identified encroachment on the "Old Town" area as a significant challenge to law enforcement. This problem arises because the commercial and residential centre overlaps with boundaries of the ancient city that was declared an ancient monument between 2006 and 2009. Currently, there has been no collaborative solution between government agencies and the private sector. This lack of cooperation also results in residents' reluctance to participate in conservation projects. (Rualom 2022)

### ***Enhancement and Conservation of National Environmental Quality Act***

As described in the previous section, the law primarily focuses on environmental preservation according to its main objectives. Consequently, this limits its scope in addressing specific conservation practices for culturally valuable sites. Another problem is the restriction related to the enforcement duration of the law. When an area is declared an "Environmental Protection Zone" for a specified period, it requires local administrative organisations or relevant government agencies to issue local regulations or implement protective measures. In practice, many areas declared conservation zones under the Environmental Act have not been issued local regulations for effective control. Consequently, the duration of the ministerial announcement for area protection needed to be extended repeatedly.<sup>9</sup> (Suttipisan 2021)

### ***The Administration of State Affairs Act: Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns***

Since the enactment of the Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns in 2003, the "Old Town System" has been applied in various areas in Thailand. From 2005 to 2021, 36 old town zones were declared. Additionally, "Master Plans for the Conservation and Development of Old Towns" have been created to guide operations in these areas. However, based on the analysis of data from interviews, meetings, and field studies, several problems have been identified in regards to the implementation mechanisms of the "Old Town System."

Firstly, the formulation of master plans, which are an important regulatory tool, have not been carried out effectively. One detrimental factor is the lengthy process involved in creating the master plan. This includes defining the area boundaries, appointing the Old Town Subcommittees, and drafting the master plan, all of which require Cabinet approval. Additionally, the master plan is not well integrated with provincial strategic plans, resulting in strategic plans that did not carry out tasks and budgets according to the master plan.

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<sup>9</sup> One example of the ministerial announcement for area protection that has been extended is the "Ministerial Announcement designating Environmental Protection Zones and Measures in Phuket Province of 2017."

Another problem stems from the composition and tasks of Old Town Subcommittees. These subcommittees are the main responsible bodies under the law for drafting and promoting the master plan. The lack of coordination between these subcommittees and other agencies has resulted in inefficient implementation of the master plan. This problem is exacerbated by committee members representing different government agencies, do not have expertise in cultural heritage conservation and management. Consequently, they oversee and implement master plans with limited effectiveness (Suwannachart 2021). In addition to the issues mentioned earlier, a further problem arises because the Old Town Subcommittees do not have the authority to implement the plans themselves. They must coordinate with local agencies, such as provincial public works departments, provincial cultural offices, or municipalities, to carry out the planned activities. Furthermore, requesting local agencies to implement the master plan had not been effective because of their existing responsibilities. They also lack the direct mandate to conserve and manage heritage, and therefore cannot carry out these tasks competently (Chataranont 2022; Sathien 2022).

Another issue arises from a tool established by the Prime Minister's Office Regulation, in which the Old Town Subcommittee must approve the construction of government buildings or structures on state land in the old town area. When agencies submit construction projects for approval to these subcommittees, the process is often delayed due to their infrequent meetings. Additionally, there are no clear guidelines for architectural designs, documentation, conservation requirements, or control practices concerning valuable structures and sites (Sathien, 2022).

In areas governed by the “Old Town System,” the process for obtaining construction permits for government projects differs considerably from private sector projects. For instance, government construction projects or those on state land must first receive approval from the Old Town Subcommittees before notifying local government organisations (municipalities or sub-district administrative organisations). In contrast, private-sector construction permits are regulated by the Building Control Act and the Town Planning Act and are approved directly by local government organisations.

Field studies in the old towns of Phayao and Songkhla reveal an additional problem. Numerous construction projects for tourist attractions, undertaken by provincial agencies or private sectors, had not enhanced the cultural landscape. Although the Old Town Subcommittees have the authority to disapprove these projects, their decisions can be repealed by a provincial-level appeal committee. This situation highlights a limitation of the Prime Minister's Office Regulation on the Conservation and Development of Rattanakosin and Old Towns, which grants power to the subcommittees within the “Old Town System.” Specifically, this regulation does not provide the subcommittees with final decision-making authority to halt conservation and development projects in the Old Towns.

### ***The Building Control Act***

Due to the absence of definitive legal tools to protect structures and sites not classified as ancient monuments, particularly heritage sites within protected areas governed by other legislations.<sup>10</sup>

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<sup>10</sup> In controlled areas governed by other legislation, we found that local ordinances under the Building Control Act have been indirectly employed for conservation purposes. These include “Old Towns” under the Prime Minister’s Office Regulation on the Conservation and Development of Rattanakosin and Old Towns, “Environmental Conservation and

subordinate laws under the Building Control Act, particularly local ordinances, have been indirectly used for this purpose. Some experts, for instance, Kirdsiri (2021), have highlighted the necessity of using local Building Control Ordinances to maintain the quality of the environment and structures as a temporary measure until direct legal tools to conserve tangible cultural heritage are developed in the future.

Nevertheless, this research found that in many areas, enforcing local Building Control Ordinances for this indirect purpose is ineffective because the provisions specified in this law are more suitable for controlling the physical characteristics and designs of new buildings and modifications. It does not specifically identify structures or areas requiring protection, nor does it include a conservation process that encompasses value assessment, registration, and the establishment of guidelines to preserve that value. It is limited to regulating overall components such as building characteristics, area size, colour, height, open space around buildings, and land use.

Interviews and group meetings with experts highlighted several negative impacts of using local ordinances under the Building Control Act. These regulations impose rigid controls on physical elements and enforce certain homogenous traditional characteristics, making it challenging to promote social and cultural diversity that reflects the city's evolution. Furthermore, the lack of clearly defined terms and conservation processes in these regulations may lead property owners to remove valuable and authentic building components, replacing them with new elements that comply with the architectural details and styles mandated by law (Pimonsathean 2021; Chukaew 2021).

Interviews with business owners in the old towns of Phayao and Songkhla confirm the problems and reveal both direct and indirect impacts resulting from compliance with legal tools under the Building Control Act. One issue arises from regulations that prioritise construction and building safety, which may lead to significant structural elements failing to meet current safety standards. For instance, wooden roofs or staircases may not comply with safety regulations, necessitating their removal or replacement to meet legal requirements. The study areas also highlight problems related to the ambiguity of various legal provisions, which require interpretation by local authorities. Public misunderstanding or intentional non-compliance with the law often results in unintentional damage to the authentic value of the buildings. Moreover, legal tools may incentivise building owners to remove original elements and reconstruct them to maximise space or height within legal limits (Chataranont 2022; Rujiravilai 2022).

### ***The Town Planning Act***

The Land Use Designation Plan, whether in the form of a comprehensive town plan or a specific town plan, can be indirectly applied to regulate heritage structures and sites. In practice, only the comprehensive town plans have been used for such purpose. These areas which encompass valuable buildings and sites have been designated as “Art and Cultural Conservation Zones.”

However, field studies conducted in the old towns of Phayao and Songkhla revealed issues with the implementation of “Art and Cultural Conservation Zones.” These designated areas do not align with

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Protection Zones” under the Environmental Act, and “Cultural and Artistic Conservation Zones” under the Town Planning Act.

the “Conservation Zones” outlined in the Master Plans for the Conservation and Development of Old Towns. Additionally, these conservation zones overlap with residential and commercial areas, leading to conflicts over land use and development policies.

Pimonsathean (2021) highlighted a common misconception among practitioners that conserving valuable structures or areas necessitates the development of specific town plans. These plans, which are designed on a case-by-case basis, are not well-suited for establishing a nationwide conservation system for significant structures or areas. While they provide detailed guidelines and requirements for conservation or promotion aligned with the area's value and significance, they apply only to designated areas and cannot protect structures beyond their boundaries. Developing specific town plans involves defining locations and detailed components, controlling physical attributes of buildings and structures, such as space, size, and height, and potentially include land expropriation, which may affect the public. Consequently, the issuance of these plans requires enacting specific town planning laws or royal decrees, a process that is complex and time-consuming. Given these factors, specific town plans may not be ideal for setting up a comprehensive conservation system.

### **Overall Issues in the Practical Application of the Legal Framework**

Based on the compilation of documentary and empirical data, the previous section has outlined the functioning of five main sets of laws used in managing tangible cultural heritage. The Ancient Monuments Act is explicitly designed for the conservation of ancient monuments. In contrast, the other four sets of laws are not specifically aimed at conservation but are employed to preserve and manage certain types of heritage within the limitations set by each law. This section will, after addressing the problems and limitations of each law, illustrate the complex mechanisms of the overall legal framework when these laws are applied together and highlight the resulting issues, limitations, and impacts.

To enhance understanding, the diagram below (Fig. 2) illustrates the structure for managing tangible cultural heritage using these five sets of laws. It shows the connection and interaction among a) Authorities: the agencies responsible for both oversight and operational matters, b) Laws: primary and secondary laws, c) Cultural Heritage: what kind of heritage does each set of laws protect, d) Objectives and Protection: provided by the laws, and e) Illustrations of Heritage Scope: showing examples of tangible cultural heritage that the laws are empowered to protect and manage.

Based on Fig. 2, the key issues in the structure for managing tangible cultural heritage using the existing five sets of laws can be analysed in terms of two main issues as follows:

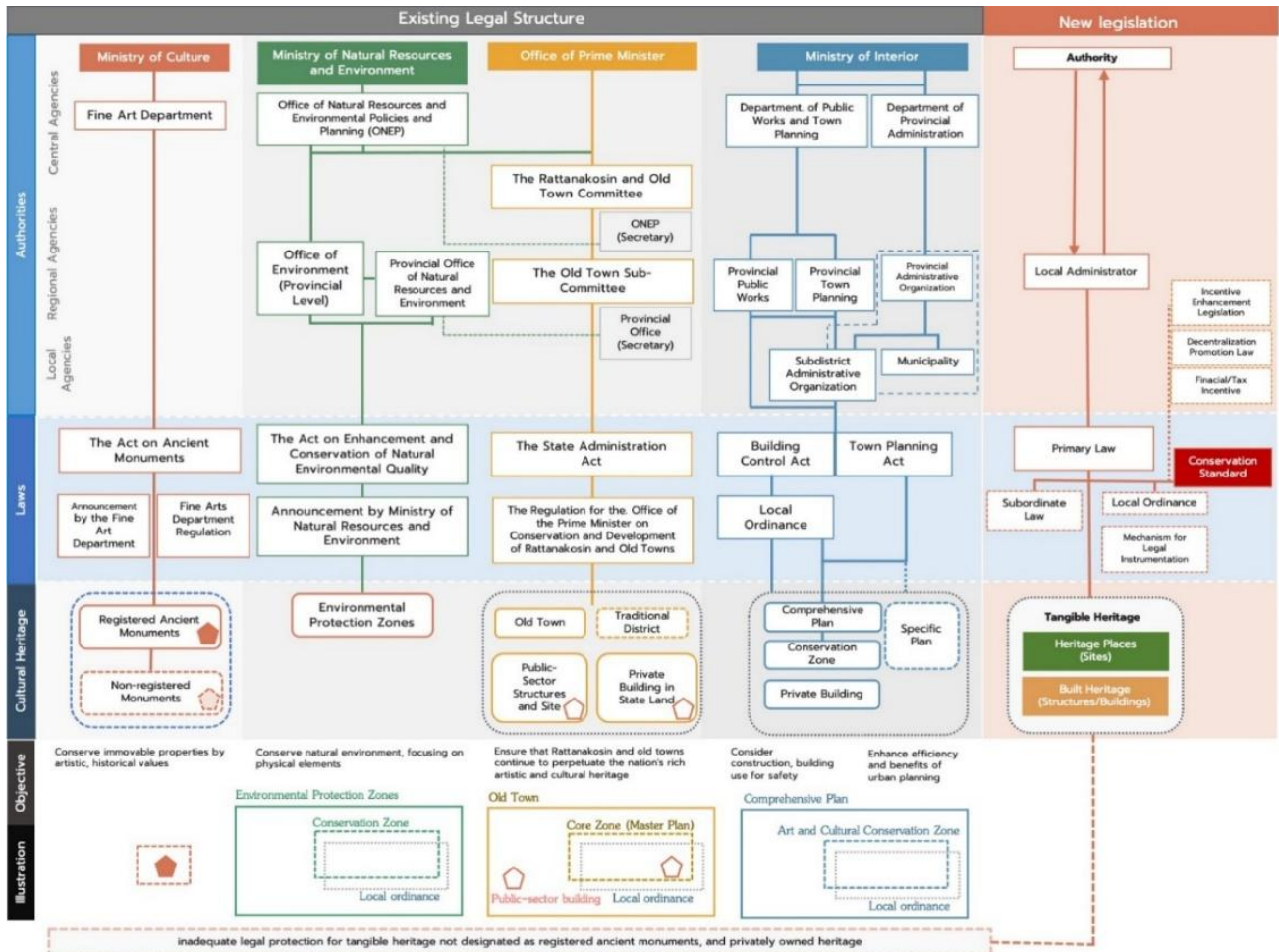


Fig. 2 Diagram illustrating the existing legal framework for conserving tangible cultural heritage in Thailand, and a proposed new legislation. This diagram is derived from the research study “Legal and Government Policy Guidelines on Resolving Cultural Heritage Management Challenges.” Source: Illustration by Issarathumnoon, 2022.

**Legislative Gaps, Objective of the laws, and Heritage Scope**

The diagram reveals “legislative gaps,” for example, the distinction between primary and secondary laws and the distinction among sets of laws create loopholes and ambiguities in legal coverage. Four sets of laws, namely the environmental law, town planning law, building control law, and the Prime Minister’s Office regulations on old town areas, offer heritage protection by controlling physical elements and uses. However, they do not explicitly address the conservation of tangible heritage at either the area or building level. They provide few specific definitions or criteria for the conservation and management of valuable buildings and offer only limited detailed guidelines. They also lack specific definitions and criteria for the conservation and management of valuable buildings and fail to provide detailed guidelines.



Even though the Ancient Monuments Act, along with the abovementioned four laws, seem to work together, they operate independently within their legal objectives. Each law thus applies to control or protect certain types or aspects of tangible cultural heritage as specified under each law. This leads to the limitation of the “heritage scope.” Some cultural heritage assets, particularly structures and sites without registered ancient monuments, and buildings and sites belonging to private sectors are often not adequately covered under the current legal framework, leading to potential neglect or insufficient protection.

The “Illustrations of Heritage Scope” show the Ancient Monuments Act protects only heritage classified as “registered ancient monuments,” and excludes heritage considered of lower value. The other three sets of laws, including “Environmental Conservation and Protection Zones,” “Art and Cultural Conservation Zones,” and “Old Towns,” protected under environmental laws, town planning laws, and the Prime Minister’s Office regulations on old town areas respectively, are applied to regulate broad “areas” without specifying individual buildings and could only issue regulations within the objectives of each set of laws. These days, local Building Control ordinances are borrowed to control physical elements and uses as part of protecting valuable structures and sites not covered by any law. However, such uses for conservation purposes has led to enforcement problems and indirect impacts, as previously mentioned.

In addition to the constraints imposed by the objectives of each set of laws, the effectiveness of these legal tools is also limited as they are derived from laws focusing on area control, making it difficult to apply to the conservation of single buildings and groups of buildings. The illustrations in Fig. 2 show that some protected areas overlap, while others are excluded from protection. Additionally, some ancient monuments and other valuable structures and sites lie outside these protected zones, leaving them unprotected by any legal tools. Currently, relevant agencies are attempting to adapt legal tools used for the three types of protected areas to smaller scales, such as neighbourhoods and individual buildings, however the effectiveness is limited. Additionally, these laws can only apply to designated areas, not buildings outside those boundaries.

### ***Fragmentation of Authority***

The current structure separates the functions of the agencies responsible for each set of laws, from the ministry level down to local operations. This structure results in disjointed and sometimes overlapping operations, as evidenced by structural analysis and empirical data. However, the diagram shows attempts to connect the upper levels of two agencies: the Ministry of Natural Resources and Environment, responsible for environmental conservation, and the Prime Minister’s Office, which created regulations for the “Old Town” system by involving the Natural Resources and Environmental Policy and Planning Office as the secretariat for the Old Town Subcommittees. Despite this effort, coordination between these two agencies remains ineffective.

Implementing each set of laws is challenging due to the separate responsibilities of the ministries overseeing each law. There is also a lack of coordination between upper-level oversight agencies and local agencies, such as Subdistrict Administrative Organisations (SAOs) and municipalities. A clear example is the ineffective implementation of the Master Plans for Conservation and Development of the Old Towns, which requires coordinated efforts from provincial-level Old Town Subcommittees down to local responsible agencies. Additionally, the current legal framework

divides the control of government and private buildings. The Prime Minister's Office regulations for the "Old Town" system can only control government-owned or state-owned buildings within old town areas. Private buildings that are not designated as registered ancient monuments must rely on legal tools from the Town Planning Act or the Building Control Act to control their physical characteristics and uses. These tools do not align with the objectives of conservation laws, resulting in ineffective operations and issues as previously discussed.

## **Proposed Solutions for Enhancing the Legal Framework for Tangible Cultural Heritage Conservation in Thailand**

Current legal tools for conserving and managing tangible cultural heritage in Thailand are inefficient due to two main problems. The first issue is the lack of comprehensive protection. Existing laws do not cover all types of tangible cultural heritage adequately. Different laws offer varying definitions and conditions for protection, and the specific goals of each law limit their power to protect, control, and manage tangible heritage. Additionally, heritage sites with low or moderate value, especially those not designated as registered ancient monuments, as well as those privately owned or located outside protected areas, receive inadequate protection and enforcement. The second problem is fragmented implementation. Various agencies are responsible for different aspects of heritage conservation, leading to complex applications and disjointed operations.

To address these issues effectively, revising the overall legal framework for managing tangible cultural heritage would be more beneficial than amending individual laws. One of the potential solutions is to create a primary heritage conservation law with the direct objective of protecting, conserving, and managing tangible heritage inclusively. This law would provide a comprehensive framework to address current gaps and fragmented implementation. Since regulatory frameworks are essential heritage management tools, the primary heritage conservation law should prioritise the multidimensional values of cultural heritage over mere physical attributes. The law should set out clear definitions of tangible heritage, conservation principles, and conservation processes, encompassing both heritage protection and providing incentives for proper heritage management.

To align with the existing legislative framework, terminologies and regulations from current laws should be considered alongside the primary conservation law to avoid redundancy. Specifically, the primary conservation law should cover heritage buildings not designated as registered ancient monuments and those that beyond typical consideration. Moreover, the primary heritage conservation law should be supported by supplementary laws and measures to ensure system-wide coherence. Fig. 2 shows how the new legislative structure is integrated into the existing legislative framework (on the right side of the diagram).

To enhance operational efficiency, the primary heritage conservation law and its supplementary laws should be managed by a supervisory agency. However, this research is unable to specify the exact agency responsible for this role, as this responsibility lies with existing agencies reaching such a consensus. Further research on governance, public administration, and related fields is needed to address this uncertainty and to propose a clear solution. In addition to direct legal tools for conservation, other measures should also be implemented. These include legal tools that promote decentralisation from central to local agencies and to enable private and civil sectors to

participate in conservation efforts. Additionally, supervisory agencies should be equipped with tools to monitor the operations of local agencies. Developing “conservation standards” alongside legal tools is likewise crucial for this monitoring process.

In conclusion, enhancing the legal framework for tangible cultural heritage conservation in Thailand requires a comprehensive and integrated approach. By establishing a primary heritage conservation law prioritising the multidimensional values of cultural heritage, defining clear conservation principles, and integrating existing legislation, Thailand can address the current inefficiencies and fragmented implementation of heritage laws. Moreover, the creation of a supervisory agency and the development of conservation standards will ensure cohesive and effective management across various sectors. Future research should focus on governance and public administration to identify the most suitable agency for overseeing these efforts and to further refine the proposed solutions. Through these measures, Thailand can better protect its rich cultural heritage for future generations.

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