

# LAW MAKING PROCESS



## SEMINAR PERUNDANGAN JABATAN PERDANA MENTERI

ANJURAN BERSAMA DENGAN PEJABAT PEGUAM NEGARA

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YUSSOF

# 5 STAGES OF LAW-MAKING PROCESS

STAGE 1	FORMULATION OF POLICY
STAGE 2	INSTRUCTION TO DRAFT
STAGE 3	PREPARATION OF DRAFT LEGISLATION
STAGE 4	MAKING LAW
STAGE 5	PUBLICATION OF LAW IN GOVERNMENT GAZETTE



# LAW MAKING PROCESS

## POLICY-MAKING PROCESS

**POLICY RECOMMENDATION  
AND WORKING PAPER TO  
PASS NEW LAW**

Consultation with other  
government agencies  
and members of  
Legislative Council

Formulate  
government policy

POLICY

Give effect to  
government policy  
through the  
enforcement of law  
and administratively

Acquire legal advice  
from Attorney  
General Chambers

APPROVAL IN  
PRINCIPAL OF  
MINISTRY OR  
AUTHORITY  
WHO HOLDS  
JURISDICTION/  
RESPONSIBILITY  
FOR  
LEGISLATION

FORMULATION OF  
LEGISLATIVE SCHEME

Acquire legal  
advice from the  
Attorney General  
Chambers

AGC

Formulate  
legislative  
drafting  
instructions

Consultation  
with other  
government  
agencies

LEGISLATIVE  
DRAFTING  
PROCESS

LEGISLATIVE  
DRAFTING  
PROCESS  
INITIATED

FORMAL  
INSTRUCTION  
TO AGC TO  
PREPARE DRAFT  
LEGISLATION



# STAGE 1

# FORMULATION OF POLICY





- ❖ The Ministries, departments and statutory bodies are responsible for the formulation of the legislative policy and also in initiating the drafting of the required legislation.
- ❖ Policy recommendation and working papers to pass new laws must have approval in principle from His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam or the Ministry or authority holding responsibility for administering the proposed legislation.



- ❖ It requires detailed planning through a study on the need to introduce legislation, including the current legal position, how the proposed legislation will change it and how the proposed legislation will implement the policy; a study and research of equivalent laws of countries such as Singapore and Malaysia; consultation with other Government authorities to seek their views and approval concerning the legislative proposal.
- ❖ The Ministries, departments or statutory bodies may want to seek legal advice from the Attorney General's Chambers on their legislative proposal.



# STAGE 2

# INSTRUCTION TO DRAFT





- ❖ The role of the Ministries, departments and statutory bodies is to translate political and administrative policy into legislative policy through drafting instructions.
- ❖ Drafting instructions provide a more detailed view of how the policy will be reflected in the legislation and allow other Ministries, departments or statutory bodies an opportunity to consider how the proposal may affect their responsibilities and interests.





- ❖ The drafting instructions guide the legislative drafter and provide information relating to what, why and when it has to be done.
- ❖ The drafting instructions need to cover, among others, a background information; the nature of the problem; a statement of the history or circumstances giving rise to the proposals and the nature of the issues; the aims of the legislation or its principal objectives; the rationale for the proposal; any consequential amendment; commencement date.



## Publication

1. Brunei Darussalam Treaty Series:

- i) Counter Terrorism
- ii) Intellectual Property
- iii) Law of the Sea and Maritime

2. Government Contracts Manual

3. Musings From Chambers: *Chambers Decoded*

4. Attorney General's Chambers Report 2013 -2015

5. Guidelines on Criminal Case Negotiations

6. Drafting Instructions Handbook (*Panduan Arahkan Penggubalan*)

7. Practical Approach on the Preparation of Initial Draft  
(*Pendekatan Praktikal untuk Menyediakan Rang Permulaan*)

8. Law Making Process

9. Policy Making Process

10. Attorney General's Chambers Strategic Plan 2012 - 2017 (*Rancangan Strategik 2012 - 2017 Pejabat Peguam Negara*)  
[English Version] [Malay Version]

Legislation Online

E-Library

Publication

Investigation Papers Registry

Intellectual Property



# PRACTICAL APPROACH ON THE PREPARATION OF INITIAL DRAFT

1. List out the current issues and implication
  - ❖ List out the issues concerning the subject matter.
  - ❖ Please highlight the reasons for the concerns, their implications and the proposed solutions (if any).
  - ❖ List out potential stakeholders.
  
2. Benchmark
  - ❖ Study how other jurisdictions, preferably Singapore, Malaysia or other Commonwealth countries, deal with the issues or the subject matter, that is either administratively or through the introduction of legislation.
  - ❖ If legislation is proposed, compile the laws (softcopy and hardcopy) of those jurisdictions (countries) that have been identified to be used as reference.



### 3. Study the benchmark

- ❖ Read, study and understand each provision and relate to the issues to be tackled and consider whether it is suitable to Brunei Darussalam.

### 4. Preparation of initial draft

- ❖ Initial draft does not need to be perfect as long as all relevant provisions are there.
- ❖ Relevant provision means the provisions that have basis or reasons to be incorporated in the draft.
- ❖ If uncertainty arises with respect to the relevancy of the provision, this can be highlighted in the draft itself in the form of a footnote.



## 5. Table of Comparative Legislation

- ❖ Table of Comparative Legislation can be prepared at the same time when the initial draft is being prepared.
- ❖ This table will be very helpful to assist the Ministry and also the Attorney General's Chambers to understand the source of the provisions proposed.

## 6. Internal Discussions

- ❖ Discussions among stakeholders within your organisation is encouraged to check and test the acceptance of the initial draft as a document to reflect the government policy.



## 7. Approval-in-principle of Director and Ministry

- ❖ Approval-in-principle from the Director and the Ministry concerned to be acquired to endorse the initial draft.

## 8. Collaboration

- ❖ Discussions among stakeholders, if any, outside your organisation, is also encouraged. This ensures their cooperation in the enforcement of legislation in the future and their interest is not affected.



## 9. Approval-in-principle of Ministry of Finance and Economy

- ❖ Approval-in-principle from the Ministry of Finance and Economy is to be acquired if the initial draft contains any financial provision that involves financial commitment on the part of the Government.

## 10. Submission of initial draft to Attorney General's Chambers

- ❖ The initial draft can now be submitted to the Attorney General's Chambers for consideration and perusal.



# STAGE 3

# PREPARATION OF DRAFT LEGISLATION



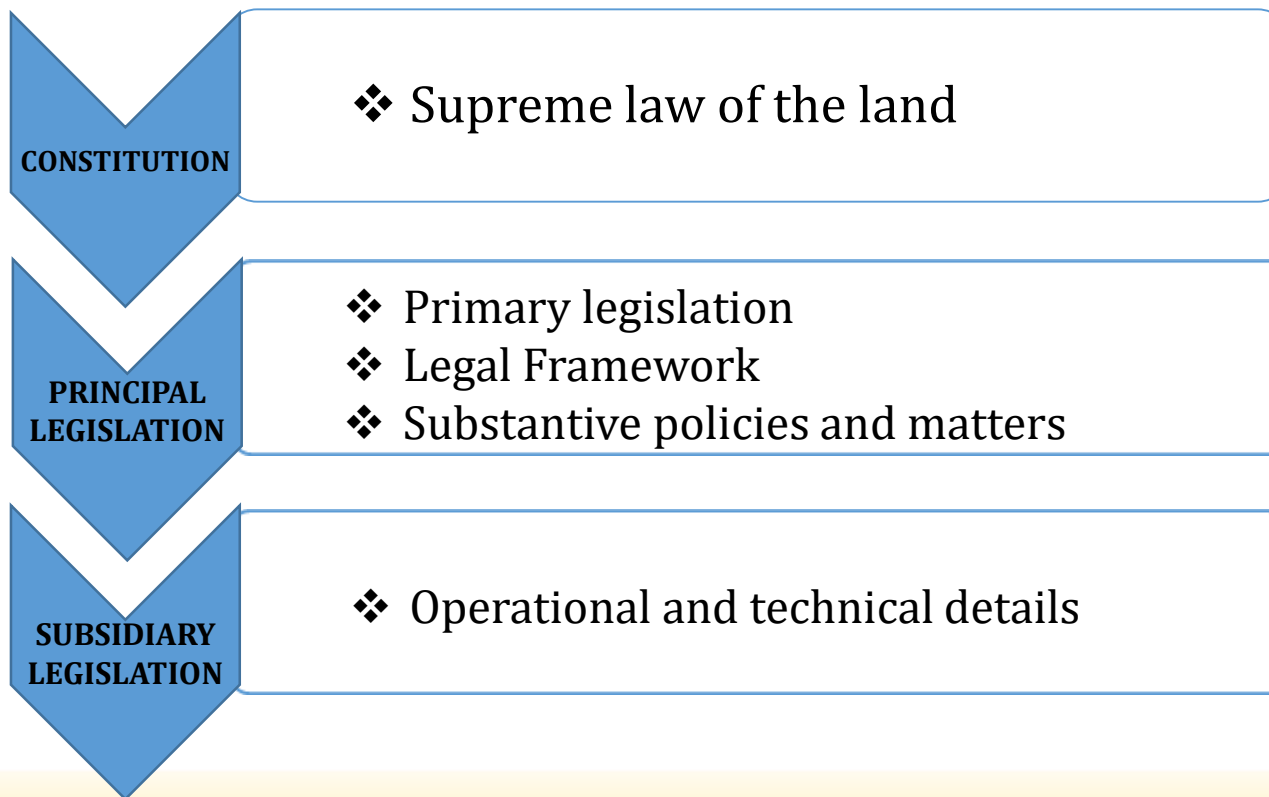




- ❖ On receipt of drafting instructions, the legislative drafter must make sure that he has a thorough understanding of the legislative proposal.
- ❖ A legislative drafter has the responsibility to prepare the requisite draft legislation; to confirm the suitability of the legislative proposal or the need for legislation; to identify and resolve constitutional and legal issues; to raise questions of principle and spot any financial or other practical implication; to refer any relevant matter to their divisions of the Attorney General's Chambers; and to maintain an orderly statute book.



# TYPES OF LEGISLATION





- ❖ Principal Legislation – Act (referred as Chapter in the Laws of Brunei) and Order (referred as S/ [year of gazette]) via Articles 83(3) of the Constitution of Brunei Darussalam.
- ❖ Subsidiary Legislation (SL)– Rules, Regulations, By-Laws, Notifications, Order (with small O) and Proclamations. SL is drafted using its enabling provision in the principal legislation.



# TYPES OF LEGISLATIVE DRAFTING INSTRUCTIONS RECEIVED FROM CLIENT

- ❖ To make new laws
- ❖ To amend (to add or to remove) provisions within the legislation
- ❖ To repeal legislation



# TRANSLATING POLICY INTO LEGISLATION

- ❖ When is legislation needed?
- ❖ When and when not to legislate?
- ❖ When legislation fails?



# WHEN IS LEGISLATION NEEDED

- ❖ To regulate behaviour
- ❖ To change existing legal rights or obligations
- ❖ To create new rights or obligations
- ❖ To take on new international obligations



# WHEN AND WHEN NOT TO LEGISLATE

- ❖ Legislate only and to extent necessary
  
- ❖ Reduce red-tape
  - **Laws are intrusive, high cost, high maintenance**
  
- ❖ Calibrate level of legislation for optimum effect
  - **Consider alternatives to legislation**



# WHAT TO AVOID IN THE PROPOSED DRAFT

- ❖ Any type of legislation cannot be inconsistent with the Constitution or other written laws.
- ❖ Retrospective effect legislation. Total prohibition on retrospective legislation for criminal offences and punishment.
- ❖ Mindful of Brunei's international obligation when preparing drafts.
- ❖ Avoid one size fits all penalty provision.
- ❖ Ensure the correct body exercise the new power.





# STAGE 4

# MAKING LAW





# AUTHORITIES TO MAKE LAW

- ❑ HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN
  - Orders made under Article 83(3) of the Constitution of Brunei Darussalam
  
- ❑ Minister or Statutory Bodies responsible for the enforcement of the particular legislation
  - Subsidiary Legislation



# HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN

- ❖ Article 83(3) of the Constitution of Brunei Darussalam
- ❖ Makes 'Orders' which he considers desirable in the public interest
- ❖ Orders commences from the date of making 'Orders'
- ❖ Orders to be laid in the next meeting of the Legislative Council for resolution whether the Orders will cease to have effect or be passed

CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))

COMPULSORY EDUCATION ORDER, 2007

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation and long title.

1. (1) This Order may be cited as the Compulsory Education Order, 2007.

(2) The long title of this Order is "An Order to provide for compulsory education and for matters connected therewith or incidental thereto".

Regulations.

14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 14th. day of Zulkaedah, 1428 Hijriah corresponding to the 24th. day of November, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM



CONSTITUTION OF BRUNEI DARUSSALAM  
(Order made under Article 83(3))

COMPULSORY RELIGIOUS EDUCATION ORDER, 2012

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Compulsory Religious Education Order, 2012 and shall commence on the 1st. day of January, 2013.

(2) The long title of this Order is "An Order to provide for compulsory religious education and for matters connected therewith or incidental thereto".

Regulations.

16. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 24th. day of Syaaban, 1433 Hijriah corresponding to the 14th. day of July, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM



CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))

CENTRE FOR STRATEGIC AND POLICY STUDIES ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Centre for Strategic and Policy Studies Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the establishment of the Centre for Strategic and Policy Studies and for matters connected therewith".

Rules.

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as may be necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

Made this 20th. day of Rabiulakhir, 1427 Hijriah corresponding to the 18th. day of May, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM



14th. JUNE, 2006

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No. S 68

**CENTRE FOR STRATEGIC AND POLICY STUDIES ORDER, 2006**  
**(S 64/06)**

**NOTIFICATION OF COMMENCEMENT UNDER SECTION 1(1)**

In exercise of the power conferred by subsection (1) of section 1, the Prime Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, has appointed the 1st. July, 2006 as the date on which the Centre for Strategic and Policy Studies Order, 2006 shall commence.

Dated 16th. day of Jamadilawal, 1427 Hijriah corresponding to the 13th. day of June, 2006.

**PENGIRAN DATO PADUKA HAJI ISMAIL**  
**BIN PENGIRAN HAJI MOHAMED**  
Permanent Secretary,  
Office of the Prime Minister.



PROTECTED AREAS AND PROTECTED PLACES ACT  
(CHAPTER 147)

PROTECTED PLACES [NO. 3] ORDER, 2010

In exercise of the power conferred by section 5(1) of the Protected Areas and Protected Places Act, the Minister of Home Affairs hereby makes the following Order —

Citation.

1. This Order may be cited as the Protected Places (No. 3) Order, 2010.

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29th. JUNE, 2010

Dated this 8th. day of Rejab, 1431 Hijriah corresponding to the 21st. day of June, 2010.

PEHIN UDANA KHATIB DATO PADUKA SERI SETIA  
USTAZ HAJI AWANG BADARUDDIN BIN  
PENGARAH DATO PADUKA HAJI OTHMAN,  
Minister of Home Affairs,  
Brunei Darussalam.





TOBACCO ORDER, 2005

(S 49/05)

TOBACCO (COMPOSITION OF OFFENCES) REGULATIONS, 2007

In exercise of the power conferred by section 31(3) of the Tobacco Order, 2005, the Minister of Health, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation and commencement.

1. These Regulations may be cited as the Tobacco (Composition of Offences) Regulations, 2007 and shall commence on the same date as the Tobacco Order, 2005.

Made this 13th. day of Rejab, 1428 Hijriah corresponding to the 28th. day of July, 2007.

PEHIN ORANG KAYA INDERA PAHLAWAN  
DATO SERI SETIA HAJI AWANG SUYOI BIN HAJI OSMAN  
Minister of Health,  
Brunei Darussalam.





- ❖ In the case of a Bill, it is to be introduced in the Legislative Council as provided under Parts VI and VII of the Constitution of Brunei Darussalam. Currently, only the Supply Bill is introduced and debated in the Legislative Council. After the Bill is passed, His Majesty the Sultan and Yang Di-Pertuan assents to, signs and seals the Bill with the State Seal.



# STAGE 5

# PUBLICATION LAW

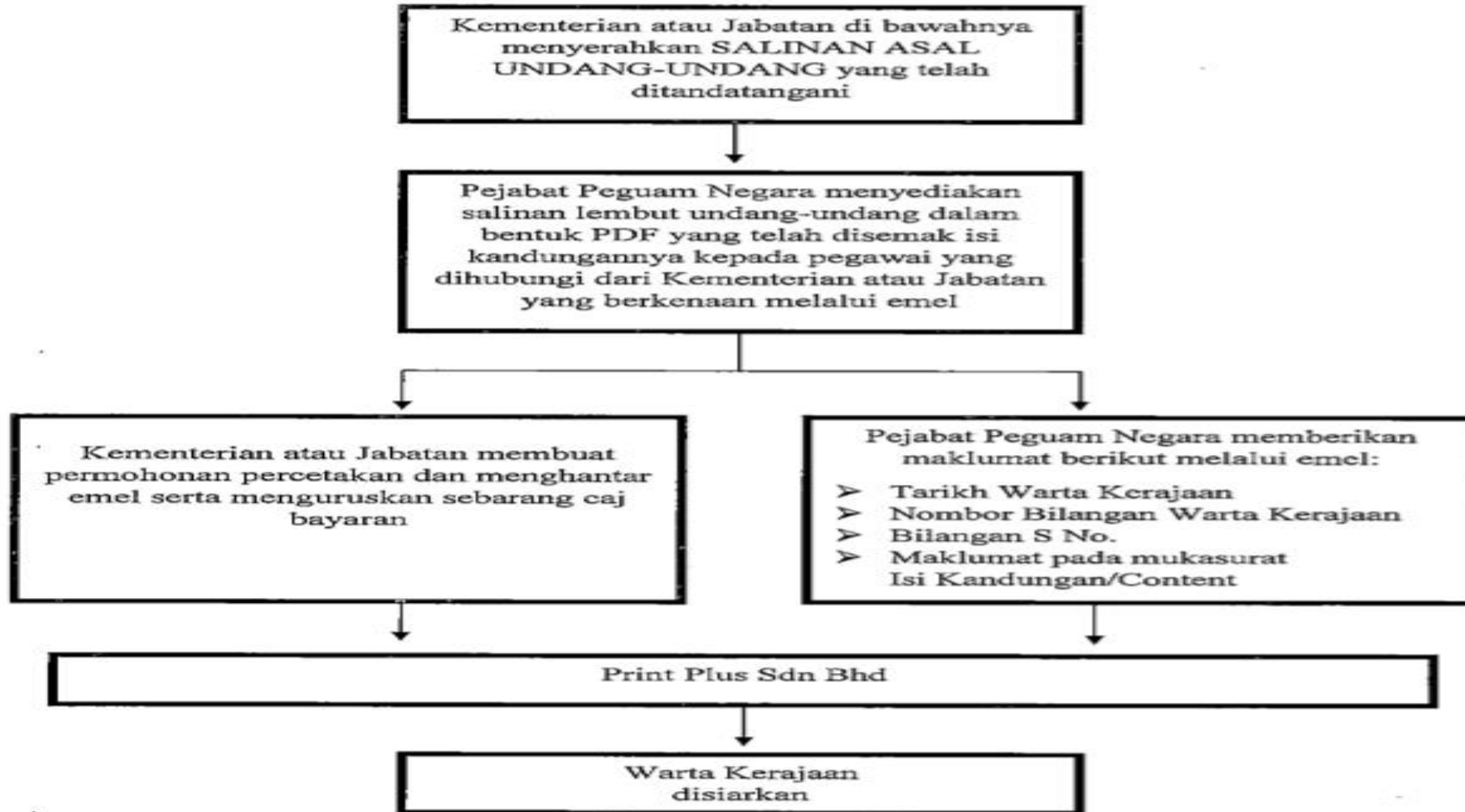




- ❖ Signed copies of legislation are returned to the Attorney General's Chambers for gazetting – depends on the types of legislation.
- ❖ Print Plus Sdn Bhd.



## WARTA KERAJAAN BAGI UNDANG-UNDANG YANG DITANDATANGANI





DRAFTING

INSTRUCTIONS

English - Malay

Compiled and prepared by:  
Attorney General's Chambers  
Negara Brunei Darussalam

HANDBOOK





THANK YOU