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Housing Development Legislation in Malaysia

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Abstract: *The current housing development in Malaysia has presented positive economic growth, mainly in high-rise schemes with a reputation of more than one million developed. By categorising Malaysia's region, the largest percentage of strata schemes has developed with 92 per cent (1,759,471 Schemes) inside Peninsular Malaysia; Sabah contributes 6 per cent of the total, with 110,258 strata schemes, while Sarawak has the smallest share comprising 2 per cent with 46,229 stratified. Housing development demand matters in landed, even high-rise, and has increased recently, with legislation becoming a key factor discussed in this paper. Since Malaysia has been categorised into three regions, their legislation regarding authority managing and controlling development performance will automatically differ. This paper examines a general review of housing development legislation in Malaysia, especially in providing justifications for reviews of legislation endorsed in Peninsular Malaysia, Sarawak, and Sabah. Housing legislation has a major influence on monitoring and controlling today's development activities and, at the same time, moving towards more comprehensive strategies for housing development. Furthermore, this paper also illustrates the history of legislation in three of Malaysia's regions made by the State Government towards housing development through legislation.*

Keywords: Housing, Housing Development, Housing Development Legislation

1. Introduction

Living in the 20th century, the development of cities has bolstered. Cities are vast, especially since they have become the domiciles of many populations and have provided the world's essentials for centuries. At the broadest level, well-designed and planned urban play an essential role in increasing the standard of living among urban communities, notably in improving health status, improving the general living atmosphere, and achieving completed life satisfaction. The ornamentation of housing structures and the demand for classification housing structures have changed through colonisation and modernisation. Housing, or more broadly living spaces, refers to the construction and specified usage of entire homes or other facilities to provide shelter to citizens. Correspondingly, housing is one of the most significant components of life since it allows for warmth, safety, protection, and a place to catch up and rest. Every human has a fundamental need for a place to live that protects them from the dangers of the external environment. The National Housing Department (2010) also stated that a house is a basic need as it is a "shelter for all," the government is looking forward to ensuring that all Malaysians can own a home or at least rent a house (Soffian et al., 2018).

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Investing in property development is essential for a country's economic progress and meeting market demand. Housing development legislation plays a driving force in supervising development activities. This authenticates that it interferes with development activities that are compliant with the legislation. Furthermore, the property owner's and developer's interest rights are secured under the protection of law. This paper will illustrate the history of housing development and policies in Malaysia, along with the legislation applied in Malaysia. With this, the researcher applied comparative analysis to understand the differences in housing development legislation endorsed in Malaysia.

2. Literature Review

2.1 Housing

According to Business Dictionary.com (2012); and Soffian et al (2018), "housing" can be described in numerous ways, including where individuals or families can reside in buildings or structures that fulfil specific government rules and may vary depending on age, family, and geographic region. "Housing" refers to anything that protects, shields, or supports another tool, added Soffian et al (2018) also defined as shelters, shields, or supports another object. Housing characteristics are known as the basic spatial scale of an objective residential environment (Huang & Du, 2015; Soffian et al., 2018). Owning housing also characterised individual achievement, and housing has grown increasingly significant in expressing family needs and is the most exclusive investment by the household (Hashim, 2010; Soffian et al., 2018).

2.2 Housing Development

A social relationship is part of a provision structure if it is a component of the physical production, allocation, consumption, and reproduction of housing, including the roles played by the state and market (Shuid, S., 2016). Since housing development plays a significant role in the industry, the Housing Development Act (HDA) defines housing development as;

> "To develop or construct or cause to be constructed in any manner whatsoever more than four units of housing accommodation and includes the collection of money or the carrying on of any building operations for the purpose of erecting housing accommodation in, on, over or under any land; or the sale of more than four lots of land or building lots with the view of constructing more than four units of housing accommodation" (p.9).

Furthermore, the Housing accommodation is defined in HDA as;

> "Includes any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises and such other type of accommodation as may be prescribed by the Minister from time to be a housing accommodation pursuant to Section 3A" (p.9).

2.3 Housing Legislation

When planning a profitable property development, management considerations are very crucial. A well-structured legislation is significant to sustainable development in housing due to Junaidi, N. H., & Salleh, D. (2014) effective development control will avoid problems stemming from inconsistent development. Tosics (2004) defined that without suitable suggestions for housing policies, no concept of sustainable development can be successful (and vice versa). Housing legislation may be described as the package of all policies implemented

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by a government to influence housing market performance. While controlling housing, the government plays an important role in the preparation and formulation of planning policy (Tosics, 2004; Soffian et al., 2018) so that each development project will be efficient and to the citizens' satisfaction. Both the federal and state governments regulate private sector involvement in the housing industry in Malaysia. Thus, they are the authorities in charge of creating relevant laws, and regulations, together with policies concerning housing construction (Shuid, 2015; Shuid, 2016; Mastura et al., 2018, p.15).

3. Methodology

The desktop study technique was used to review the strata practice inside Malaysia, including Sarawak and Sabah, through an extensive literature review of the secondary sources. Hence, journal articles, policy reports, previous research publications, and agency websites were used to find related articles. The content analysis technique was applied to analyse acquired documents and secondary data. The study employed terms like strata legislation and practice, Peninsular Malaysia, Sarawak and Sabah to find and collect pertinent material using Scopus, Emerald, Science Direct, and Google Scholar, among the most popular search engines. Journal articles, published housing government reports, and websites were used as online sources.

4. Review Housing Development Legislation in Malaysia

Malaysia's specialities are divided into two federals: West Malaysia, also known as Peninsular Malaysia, and East Malaysia, that has located in two states, Sabah and Sarawak. Upon the categories of federals, the legislation applied will also be different, whereby it has its own housing development legislation on monitoring the housing development performances. Housing Development (Control and Licensing) Act 1966 and Regulation (Peninsular Malaysia), Housing Development (Control and Licensing) Ordinance 2013 and Regulation (Sarawak), Housing Development (Control and Licensing) Enactment 1978 and Rules (Sabah).

4.1 Peninsular Malaysia

According to Sufian and Sapian (2009), a house is not only a basic need of a nation but is defined as a dwelling place and is constructed as a home for one or more people living together. Abdul Majid and Mohd Mustafa (1991), as well as Sufian and Sapian (2009), define a house as a shelter that should accommodate the occupant’s basic activities, such as sleeping, cooking, and resting. Any type of housing, from an essential dwelling to a spectacular house, provides shelter from the weather and can have whatever degree of intrinsic architectural interest (MacDonald, 2004; Sufian & Sapian, 2009). Housing has always been in high demand in Malaysia due to the population and economic and industrial growth (Mohd Razali, 2001; Sufian & Sapian, 2009). According to DBKL (2003), one of the government’s policies to upgrade the quality of residents’ lives is to improve the quality of housing and urge the responsible parties in the housing sector to investigate new forms of housing that can offer a more comprehensive lifestyle choice (Sufian & Sapian, 2009).

Several versions of laws and regulations governing housing development and construction in Malaysia were established to ensure that the objective of government policy is achieved. The Housing Development (Control and Licensing) Act 1966 (HDA) has long been the subject of criticism and remarks from the general public, namely homebuyers. When this Act was initially introduced and went into enforcement on August 29th,1969, there was no systematic type of agreement to manage the SPA of homebuyers between housing developers. After several amendments to the Act, debated in parliament in 1973, 1989, 1991, and 2002 (Kasi, 1998;

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Weng, 2012), the new regulations, the Housing Developer Act implemented, and the Housing Tribunal Act enforced the systematic Sale and Purchase Agreement (SPA).

2007, the housing preamble was finally declared after waiting forty-two (42) years from 1965 until 2007. With rename was "for the protection of the interest of purchasers" of landed parcels, even strata housing units, including those popular and affordable four-story walk-up flats without amenities but with ground floor shops (shop lots). Referring to Loh Tina & Ors v. Kemuning Setia Sdn Bhd & Ors and Another Appeal [2020] 4 MLRA 450, the Court of Appeal held that the primary purpose of HDA was to protect unwary purchasers from unscrupulous developers, and any departure from the structured agreement would be nullified (Bakar et al., 2021).

The HDA and the Housing Development (Control and Licensing) Regulation 1989 (HDR) were social pieces of legislation designed to protect the innocent purchasers who had little or no bargaining power and who were often, like in the instant case, not conscious as to their legal rights under the law. Based on the studies of Zolkafli et al. (2014) and Bakar et al. (2021), the rights of the property owners to get ownership of the property through the regulated contract under regulation. This Act was substantially streamlined in 2007 via the Housing Development (Control and Licensing) (Amendment) Act 2007 and amended six times via the current Housing Development (Control and Licensing) (Amendment) Act 2012; though gazetted in the year 2012, it did not enforce until four (4) years later, i.e., on 1st June 2015. HDA was introduced into the housing industry, whereby the government wanted to authorise each housing business, especially the private sector in Peninsular Malaysia, under the housing minister through his Controller of Housing. Due to the significant nature of housing projects to the public, housing developments in Malaysia are governed by stringent laws and regulations to protect the interests of buyers/consumers (Suffian & Rahman, 2008; Amin et al., 2014).

The Minister of Housing administration authorises and supervises housing matters and includes a wide range of responsibilities, yet it is not limited to housing development regulation matters. Based on Kok's (2017) studies, the main aim and purpose of HDA are primarily in Peninsular Malaysia and on issues connected; in addition, its fundamental function is to protect naïve and innocent purchasers from being cheated by unscrupulous housing developers. In brief, HDA is a protection shield for homebuyers, especially first-time homebuyers or newbies in the housing industry. The legislation is designed to protect home purchasers, most of whom are first-time homebuyers with limited financial resources who utilise their life savings to fulfil their cherished dreams of owning their homes and thereby commit to a lifetime obligation of repaying loan instalment repayments plus interest every month over ten (10) to twenty (20) years (Kok, 2017).

Since Malaysia's independence, infrastructure and housing development have become an essential social and government motif in the national development program. After the land matters are settled, the housing developer must apply, under the Housing Development Act, for a developer's license for the housing project before launching it to the public (Woo, 2001; Weng, 2012). This act of enforcement aims to protect purchaser's rights, control and license housing development operations, together with handle associated matters. Both the standard and systematic Sale and Purchase Agreement (SPA), along with the housing regulation, have protective measures. The acknowledgement of the function of enforcing the HDA in Peninsular Malaysia refers to the case of Lee Poh Choo v. Sea Housing Corporation Sdn Bhd [1981] 1 MLRH 600; Mohamed Dzaidin JC has stated,

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> "As I have stated earlier, the Housing Development (Control and Licensing) Act 1966 and its 1970 Rules were introduced for the public interest to regulate and control the business of housing developers. I believe the Act and the rules must be strictly followed."

4.2 Sarawak

Housing development performance is essential to a country's overall development status. At the core of the housing development sector lies the housing legislation implemented by the government, which provides the critical structure along with the regulations required for long-term and equitable growth in this housing industry. Sarawak introduced the Housing Developers (Control and Licensing) Ordinance 1993 on effective development control inside the industry; Junaidi and Salleh (2014) studied this ordinance that governs home construction in Sarawak, providing guidelines for licensing and oversight. Moreover, it also contains supplementary requirements connected to the primary provision of this ordinance as well as the regulation prevents concerns in housing development, including abandoned projects and environmental management.

Following the market dynamic, Sarawak has implemented legislative amendments for housing development projects into the market is governed by the Housing Development (Control and Licensing) Ordinance 2013 (Sarawak Ordinance 2013) and Regulations, the main piece of legislation which directly influences the construction activities as well as the brand of housing developers inside the industry. This Ordinance was amended from the Housing Developers (Control and Licensing) Ordinance 1993, along with the Regulations, with effect from 1st November 2014—the motif of amendments proposed by the Permanent Secretary Ministry of Housing Sarawak attempt to accomplish various objectives. The Housing Development (Control and Licensing) Ordinance 2013 in Sarawak attempts to safeguard buyers, maintain developers' financial accountability, and encourage transparency in the housing development process. The code promotes high standards in the housing business by regulating areas such as licensing, sale agreements, completion dates, and the use of funds, safeguarding the rights of both purchasers and developers.

4.3 Sabah

In Sabah, housing terms found in the Housing Development (Control and Licensing) Enactment 1978 (Sabah No.24 of 1978) ("Sabah Housing Enactment") and Rules, Housing Development (Control and Licensing) Rules 2008 ("Sabah Housing Rules"). Important terms to be studied include "housing development," "housing accommodation," "housing developer," "housing development account," "housing lot," "purchaser," "stakeholder," and ideas related to "subdivision building." The term "appropriate authority," along with others that define and clarify housing legislation within these jurisdictions, will be examined in detail.

The main objective of the Housing Enactment and Rules implemented, as had been judicially recognised and enunciated in several cases, is "to protect the interest of purchasers." However, it also ensures that each housing development scheme's progress is worked under a legal platform. The Sabah Housing Enactment by the government was so pristinely clear that one does not need a blind man to read and explain the legislative intent embodied between the lines of those respective pieces of legislation. The motif of introducing this Enactment is to protect the interests of home buyers in Sabah's incredibly "sick" housing projects (abandoned housing development) and to provide for the control and licensing of housing developers and matters connected to that.

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Sabah Housing Enactment defined "abandoned housing development" as

> "… where a licensed housing developer had refuse to carry out or delayed or suspended or stooped or ceased works continuously for a period of six (6) months or more or beyond the stipulated period of completion as agreed under the sales and purchase agreement" (p.3).

Thus, the public sector was a corridor of power to construct housing schemes based on market demand. The public sector will depend on the preferences of nations, the needs of the market, or even determined by the national budget before edifice a housing scheme inside the market. Generally, housing projects constructed by the public sector are financed by the government through funds that have been allocated under the national budget (Sirat et al., 1999; Mastura et al., 2018, p.14) for the implementation of public housing programs, institutional quarters, and other administrative constitutions (Mastura et al., 2018, p. 14). Along with the population growth as well as the surrounding environment transformation, the public sector has come to the limit of power to supply housing to the standard of living citizens. In adapting to market progressions, enacted legislative modifications in 2007 to improve the monitoring and management of housing development while additionally enhancing enforcement measures to solve challenges facing Sabah's housing industry, eventually offering better protection for housing purchasers.

5. Conclusion

The overall review studies showed similar legislation practices on housing development in Malaysia. The housing legislation gazetted in Peninsular Malaysia will not be applied in Borneo (Sabah and Sarawak) because both states have their own legislation in line with the government agenda of developing "adequate shelter for all" while giving protection for property owners' interest rights. The motif of housing development legislation is to protect the interest of property owners, even developers, and for matters connected therewith. This paper is limited to a general reviewing the housing development legislation applied in Malaysia. Therefore, future research can focus on the practices taken to solve housing development issues such as application advertisement permit and developer license (APDL), housing development account, defect liability period (DLP), and housing tribunal.

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