

ABANDONED HOUSING PROJECTS IN MALAYSIA: TO ENFORCE THE EXISTING LAWS OR INTRODUCE NEW LAWS?

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Abstract: *Abandoned housing project is a global issue and it happens in Malaysia too. This issue will bring negative impact to the stakeholders, environment and economic. In Malaysia, the government is still not able to resolve this issue although they are numerous laws and policies have been introduced and implemented by the Malaysian government. Thus, the main question is to what extend the existing laws and policies implemented by the Malaysian government has successfully reducing the abandoned housing projects. The objectives of the study are to examine the existing laws and policies and to examine whether a better legal framework should be proposed in overcoming the issues of abandoned housing projects in Malaysia. This is qualitative study and not an empirical study. The data was collected by library-based research from various primary and secondary data sources, including case laws in Malaysia, written statutes, publication of journal and article. It is suggested that the existing laws are used to their full capacity by the enforcers in order to overcome the existing abandoned housing project issues faced by the public.*

Keywords: *Abandoned housing project, Developer, Laws in Malaysia*

Introduction

The word “abandonment” in law is an act of someone who fails to act, and such failure carries the implication that the legal owner neither claims nor retains any interest in the subject matter of the abandonment (SAW, Cheng Lim, 2011).

Maslow’s (1970) classification of human needs consist of five levels of cognitive needs, including physiological needs, safety needs, belongingness and love needs, esteem needs, and the need for self-actualization. Efforts have been made to systematically link human needs to their living environment. As the welfare of a country is reflected in its people enjoying a certain standard of living, housing is a major concern for all people in every corner of the world, including Malaysia. Abandoned residential projects have become a global problem in the construction industry, and Malaysia is no exception. It was a very troubling problem as any inability to complete the projects on time will reflect a negative picture of the construction industry and impact the economy globally. After the independence of Malaysia, the Malaysian Federal Government started to provide housing accommodation to citizen. Subsequently, the private sector, especially independent housing developers were invited by the government to participate in providing housing accommodation to meet the public upsurges in demand for housing over the country (The Staronline). The Federal Government only govern the activities of these private housing developers via the housing law, specifically the Housing Developer’s (Control & Licensing) Act 1966 (Act 118) and regulations made thereunder (Md Dahlan, 2009).

Despite there are many housing policies and legal means to ensure housing success such as Town and Country Planning Act 1976 (Act 172) (‘TPCA’), there are still issues plaguing housing industry in Malaysia. For instance, one of the significant problems is the issue of abandoned housing projects. This issue has been existed since the 1970s and it has not been adequately addressed and resolved. Many purchasers have become victims in abandoned housing projects, suffered irreparable damage, and excessive losses. Abandoned housing projects are pathetic phenomena occurring in the housing industry in Peninsular Malaysia. Even though, the housing industry has developed and permeated throughout the nation since Independence day, a negative phenomenon that keeps recurring is abandoned housing projects. Thus, although land, planning, building and housing laws as well as their regulations have been passed by Parliament with the purpose of controlling and regulating the housing development industry in Peninsular Malaysia, it is regretted that the abandoned housing projects are still common and persisting until today. A total of 281 private housing projects comprising 73,959 housing units and involving 48,810 buyers, was confirmed to have been abandoned in Peninsular Malaysia from 2009 to June 30, 2020 (The Sun daily). Thus, certain review and study is required to re-evaluate and re-examine the existing legal provisions and remedies, in particular the Housing Development Act 1966 (Act 118) and its Regulations, the Street, Drainage and Building Act 1974 (Act 133), the Town and Country Planning Act 1976 (Act 172), the Uniform Building By-Laws 1984 (ON .5178/84), the National Land Code 1965 (Act No. 56 of 1965) and other relevant legislations in order to find and investigate clear and potential legal weaknesses which have caused and could cause the abandonment and its consequences.

Despite there are many laws enacted and introduced by government to deal with this problem, until today this problem has not been fully and effectively addressed and eliminated. The victims are the purchaser consumers. They suffer irreparable damage, sufferings, grievances and losses, pecuniary and non-pecuniary, without getting adequate equitable and appropriate remedies. As decided in the case of *Lim Mewah Development S/B v Dr. Jasbir Singh s/o*

Harbhajan Singh [1993] 2 AMR 1263, in a claim for late delivery there can be no claim for damages for pain, anxiety, distress and humiliation.

Through certain research, the main grounds causing abandonment of housing projects due to the failure of the government to adopt and implement policy and law that require the mandatory system of “full build then sell” by the developers, no mandatory requirement for the developer to possess housing development insurance and, there is specific regulations that can duly control rehabilitation of abandoned housing projects.

These will hopefully, assist the authorities concerned to adopt legal policies and take certain legal measures to avoid similar problems from recurring in the future. In case rehabilitation for abandoned housing projects are to be carried out, the findings and suggestions in this research can be applied for facilitating the rehabilitation until full completion.

Problem Statement

The problem statement can be divided into three namely lacuna in law relating to land, planning, building and housing laws; and inconsistency of legal and governance in housing laws.

Lacuna in law relating to land, planning, building and housing laws

Moreover, in Malaysia, there is no any legal or written law to give protection for house buyers in event of abandoned housing projects. There is also no any legal method of avoiding or dealing with stalled or abandoned housing projects (NHB, 2008). The house buyers have to bear and face all the effects of abandoned housing project by alone. Therefore, the house buyers always are the first victims in event of abandoned housing projects and this problem has been putting a lot attention.

The Housing Development (Control and Licensing) Act 1966 had amended for few times as law governing the housing industry project. Unfortunately, this Act unable to fully resolve the abandoned housing projects and this problem persistent exists in Malaysia.

Inconsistency of legal and governance in housing laws

To govern the housing industry spearheaded by the private sector, the Malaysian Government introduced laws. One of the laws is the Town and Country Planning Act 1976 (Act 172) (‘TPCA’). A study by Khalid (2010) on abandoned housing development in Malaysia discovered that the strict condition on funding provided to the bank to the developer has been a major factor in causing the problem of abandoned housing projects. Tan (2011) examines the sustainability and housing provision in Malaysia. He explained that some of the potential causes for the problem of housing projects are delay in the process for approving of land development, subdivision and issuance of titles. In addition, the ambiguous relationship between federal government, state government and local authority in terms of housing projects are also classified as contributing factors. Hoe (2003) indicated that legal and governance issues are the possible reasons that cause abandoned projects to persist. It is also reported that absence of special tribunal for home buyers, lack of home indemnity insurance and land policy, and the like, have contributed to the problem of abandoned housing projects.

Research Methodology

This research uses qualitative approach by systematically review the literature from various databases. To have a clear and precise guidance in reviewing the literature, the above research

question was constructed. The terms used for searching included: abandoned housing project, causes of abandoned housing project and failure of housing project.

Data Collection

Data collection techniques would be split into several stages to get information that is orderly. In early stage, a structure work shaped to get picture on study journey. This structure use data observation.

An extensive review of the literature has been conducted. The researchers has studied on problem occurs and the causes of the abandoned housing project in Malaysia. From the literature review, the factor, causes, impacts and the stakeholder that leads to the problem also been identified. This research has also studied the solution has been taken by government of Malaysia to preventing those problems.

Types of data

This study has used primary data and secondary data. The primary data for this study are the statutes, regulations, rules and guidelines relating to abandoned housing projects as well as cases involving abandoned housing projects. Secondary data of this study comprises of books, legal documents, and articles from journals and online resources.

Methods of data collection

Methods of data collection for this study can be divided into two namely; library research and also field work. For library research, data has been collected from law library of International Islamic University Malaysia, Universiti Kebangsaan Malaysia and Universiti Malaya.

Data Analysis

Generally, the primary legal data and secondary data have been analysed using content analysis. Specifically, the provisions relating to abandoned housing projects, rules and guidelines have been analysed by using interpretation of statutes techniques. While, court cases that relate to abandoned housing projects have been analysed by using the doctrine of judicial precedent.

Literature Reviews

Abandoned Housing Projects

According to Kumar (2017), the government had registered 253 private housing projects under Abandoned Project Rehabilitation Division's (APRD) as abandoned in Peninsular Malaysia excluded Sabah and Sarawak since 2009. Abandoned Project Rehabilitation Division's (APRD) report in year 2017 shows around 66 abandoned housing brought forward from year 2016 that were not completed among 254 abandoned housing projects (MHLG, 2017).

According to Syafril Idzwan (2008), he found that when a housing project continuously being delayed and will ending up in an abandoned state although regulate with existing laws, regulation and statutory provisions in governing the housing industry. This indicates the delayed and sick projects are one of leading way towards of abandoned of housing projects.

The Ministry of Housing and Local Government (hereinafter known as "MHLG") was considers that the project can been abandoned if 1) there has been no substantial activity on site for six consecutive months, or 2) it is involved in a winding-up petition registered at the High Court under Section 466(1) of the Companies Act 2016 (previously Section 218 of the

Companies Act 1965), or 3) it is under receivership, or 4) the developer has informed 2 the Housing Controller in writing of his inability to complete the project, or 5) the project has been certified to be abandoned by the Minister under Section 11 (1) I of Housing Development (Control and Licensing) Act 1966 (i.e. Act 118).

The issue of abandoned housing projects is not uncommon. It happened in every part of the globe for instance in United States, Europe, as well as in Asian countries (Mumin et al., 2017). According to the Statistic Report by the National Housing Department (NHD) of MHLG, the numbers of abandoned projects were irregular for each year from 2013 until September 2019 since the numbers of houses unit being approved by NHD are different in each year.

Enforcement of Laws and Policies

Poor enforcement and monitoring from the government agencies on the housing project is also cited as the root of problem. This is initially mentioned by Ibrahim (2006) as the author stated that the absence of a system to detect abandonment of housing projects revealed the poor monitoring from the government. This opinion is also favored by Khalid (2010) who stressed that it is the duty of the government to enforce all the regulations related to housing development and monitoring the housing construction progress. Weak enforcement from the government has contributed to abandoned housing projects.

If the strict rules and regulations coming from the central government are not welcomed, it may also contribute to the abandonment of housing projects particularly in China and Singapore (Mumin et al., 2017; Norhayate, Anwar, & Hasyim, 2017). Nevertheless, Sibly et. al., (2017) opined that the imposition and enforcement of strict laws and regulations alone cannot solve almost of all the issues related to abandoned housing projects.

Discussion

In view that abandoned housing projects is a serious issue in Malaysia, a “rehabilitation fund” has been proposed by the current Malaysian Housing and Local Government Minister Datuk Zuraida Kamaruddin to resuscitate abandoned housing projects (K.L. Chang, 2021).

The current Housing Development (Control & Licensing) Act, 1966 (HDA) has been in forced for more that 50 years with current amendment in 2015, however, it seems there are some loopholes and inadequacies of the provisions in overcoming the issue of abandoned housing projects although the relevant amendment to the HDA was on the issue of criminalising abandonment of housing projects by the developers. The new section 18A of the HDA provides it shall be guilty of an offence for the licensed housing developers who abandons or cause to be abandoned a housing development. Upon conviction, the said licensed housing developer will be liable to a fine in between RM250,000-00 and RM500,000-00 or even the directors of the said housing developer could possible to imprisonment for a term not exceeding three years.

However, there has not been any news of developers being prosecuted under section 18A of the HAD. It shows that the Malaysian laws are still lack of enforcement in protecting the property purchasers.

Section 6(1)(b) (Conditions or Restrictions for the grant of a Developer’s Licence) has made it compulsory for the licensed housing developers to pay the requisite deposit (refundable) from RM200,000-00 to 3% of the total construction cost. However, the issue raised is to what extent this section has successfully and effectively reduce the housing developers abandoned projects.

For the housing developers who have strong financial background, they may not care about this 3% of the total construction cost. Thus, it is up to the relevant ministry to carry out the enforcement under the laws.

Some purchasers may only afford to buy the one and only house in their lifetime due to low income. Based on the Household Income and Basic Survey Amenities Report 2019, the B40 group in 2019 comprised 2.91 million households. In terms of the income distribution, the B40 only constituted only 16% of total household income. Thus, what could be the protection for these group of purchasers if the housing developers abandoned the housing projects?

The housing ministry is the guardian of the housing legislation that was passed by Parliament. Yet, how do we account for the surmounting problematic housing projects? It is not that the ministry does not have the laws; it's the sheer lack and lax in enforcement.

Section 7A (4) provides that the licensed housing developer shall not withdraw any money from the Housing Development Account (HD Acc) except as authorised by regulations made under this Act. Even with the HD Account, there is a need for measures in preventing misappropriation of buyers' money. We are wondering whether the safety net has ever been cast out to salvage the failing projects.

Comparative Analysis from Different Countries.

1. Singapore

Unlike Malaysia, the problem of abandoned housing projects happened minimally in Singapore as Singapore's the Housing and Development Board ('HDB') provides about 80% of public housing, while the private housing developers implement only the remaining 20% of housing development. Nonetheless, out of this 20% development, there is still abandonment of housing development projects by the private developers, but the amount are very minimal.

Currently, the HDB and homeownership financed through Central Provident Fund (CPF) savings. In contrast, the private housing developers is subject to the Housing Developers (Control and Licensing) Act (Chapter 130) (Original Enactment: Act 4 of 1965).

In regard to law applicable for abandoned housing projects, as Singapore is a common law jurisdiction, the Singapore Courts have in recent years had to consider the extent to which it should be guided by major developments that have arisen in English law, in areas such as contractual remoteness, illegality and restitution. The Singapore Courts have also deviated from trite principles of English law in areas such as when there can be implied terms of due diligence and expedition in construction contracts.

Normally, for a liquidated damages provision in a contract to be enforceable it must be shown that it amounted to a 'genuine pre-estimate of loss'; that is, the clause could not be a predominantly punitive one, nor could it provide for an award of damages out of all proportion to the losses sustained by the innocent party.⁸ However, in 2015, the UK Supreme Court heard the conjoined appeals of *Beavis v. ParkingEye*; *Cavendish v. El Makdessi Holdings* [2015] UKSC 67, in which this issue was reconsidered.

However, although *Cavendish*' case has been referred to subsequently in a number of decisions of the Singapore courts, it has not been fully approved as a statement of Singapore law. That

has recently been confirmed by the High Court of Singapore in *Seraya Energy Pte Ltd v. Denka Advantech Pte Ltd* [2019] SGHC 02, in which the Court was asked to consider comparable liquidated damages provisions in three separate power purchase agreements. Those provisions rendered the contractor liable for liquidated damages, among other things, following termination of the relevant contract.

In conclusion, Singapore's housing system has evolved over time and contributed to high savings and homeownership rates, and very effectively mobilized savings for housing and growth of housing loans. More importantly, the housing system has successfully minimised the case of abandon housing projects in this country.

2. Indonesia

It was reported in the Indonesian Ministry of Public Housing Strategic Plan 2010-2014 that the country is currently in the midst of a housing affordability crisis, as recognized by the Government. This has been a result of the high urban population growth, the shortage of land for housing and urbanized land, and the sharply increasing housing and land prices that limiting the availability of affordable housing, particularly for low- and middle-income households in urban areas and has led to rapid expansion of informal settlements.

The Indonesian's constitution guarantees its citizen the right to employment and decent living for humanity (Salim,W., 2011). Further, the Amendment of 1945 Constitution provides that a house is one of the people's basic rights, thus every citizen is entitled to housing and live in a decent and healthy neighbourhood (Salim,W., 2015).

In 2020, Indonesian Government introduced new regulation on abandoned land. Government Regulation 20/21 (hereinafter referred to as "GR 20/21") introduces the term of abandoned area and differentiates between the definitions of abandoned area and abandoned land. In that regulation, abandoned area is defined as a non-forest area over which land rights have not been granted but a license, concession, or business permit has already been granted to the owner, and which is deliberately not cultivated or utilized while abandoned land is defined as land under land right title, Right to Manage land title and land acquired on the basis of land control, which is deliberately not cultivated, utilized, and/or maintained.

Further, GR 20/21 also affirms the three stages in determining abandoned areas and abandoned land. First, the areas or lands indicated as abandoned are evaluated. Second, the status of the abandoned area or land is notified to the owner of the land or the holder of a license, concession, or business permit for the area or land. Third, the land or area is determined as abandoned. Areas determined as abandoned area can either be transferred to another party or designated as a Land Bank asset. Land determined as abandoned land will become an asset of either the Land Bank or directly controlled by the state.

However, the problem of abandoned housing project is not an issue in Indonesia and at the moment, the abandoned houses in Indonesia is caused by the fact that the inhabitants of the village left the house due to safety factors. For instance, various villages nearby Indonesia's Mount Sinabung are slopes to be evacuated. The houses remain abandoned and declared as too dangerous to inhabit. Simacem is one such town, and today, it's filled with the remains of lives hastily left behind (Insider, 2020). Therefore, the legal issue regarding the regulatory framework for abandoned project has not become a priority in Indonesia.

Conclusion

The public relying on the legislation is often let down by the enforcers. It is only good on paper and it will continue to remain in our archives unless the existing laws are used to their full capacity.

The problem of abandoned housing projects is not because of the lack of laws but lack of enforcement from the relevant authorities. Thus, in order to resolve the abandoned housing projects in Malaysia, the relevant ministry is required to enforce the existing laws strictly and there is no need to introduce new laws.

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