

DIVIDE AND CONQUER: THE AGGRAVATION OF SOCIAL SEGREGATION BY GATED COMMUNITIES¹

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Abstract

Gated communities are gaining popularity amongst the urban populace, particularly in the Klang Valley and have been associated with a better level of security, a stronger sense of community and a richer social capital compared to conventional housing schemes. Despite the growing number of gated community housing schemes, the developments of gated communities have gone unchecked for several years by the relevant authorities. Several issues have emerged with regards to such developments, such as the legality of gated communities and the potential social implications of such scheme on society. This paper intends to examine the developments of gated communities in Malaysia and discuss the legal and social implications of gated communities based on the research and surveys carried out by the writer in two gated communities in the Klang Valley. It will also explore the policies undertaken by some local authorities in relation to the developments of gated communities and guarded communities, and the potential impact of such developments on the community and urban sustainability.

Keywords: *gated community, gated communities, guarded community, guarded communities, gated and guarded communities.*

INTRODUCTION

Gated communities generally refer to housing developments where access to the neighborhoods is restricted to the residents. The definitions of gated communities, locally and internationally, are usually related to the physical security features available in gated communities, particularly the perimeter fencing which surrounds the area. Apart from the security features, gated communities are also associated with other related features such as private recreational facilities and private maintenance of amenities for the residents. Although the term “gated communities” is also applicable to multi-storey developments and townhouses, the focus of this paper is on gated communities developed as landed properties.

¹ Excerpt from the author’s LL.M Dissertation, Asnida binti Mohd Suhaimi (2009), *Gated Communities in Malaysia: Legal and Social Implications*, University of Malaya, LL.M dissertation..

The local definition of gated communities was offered by Azimuddin Bahari (2005), where gated communities were described as “cluster of houses or buildings that are surrounded by a wall, fence or a perimeter or any enclosure with entry or access of houses or buildings controlled by certain measures or restrictions such as guards, ropes, strings, boom gates, chains or blocks which normally include 24-hour security, guard patrols, central monitoring systems and closed circuit televisions (CCTV).”

This description corresponds to one of the earliest definitions of gated communities (Blakely and Snyder, 1997), where gated communities were defined as “residential areas with restricted access in which normally public spaces are privatised. They are security developments with designated perimeters, usually walls or fences, and controlled entrances that are intended to prevent penetration by non-residents. They include new developments and older areas retrofitted with gates and fences, and they are found from inner cities to exurbs and from the richest neighbourhoods to the poorest.”

Gated communities are gaining popularity in countries such as the United States of America,

Australia, South Africa and also Malaysia. It is the housing developers' contention that gated communities are safer compared to the conventional housing schemes as they put emphasis on security by restricting access to the housing area. Blakely and Snyder described that gated communities are not limited to upmarket neighbourhoods. Nevertheless, the price of properties located in gated communities show that it could not be afforded by those in the lower income bracket, thus creating an unhealthy perception that gated communities promote segregation between the have and the have-nots. Gated communities have also set off the concept of guarded communities. Guarded communities resemble the operation of gated communities, except that the former do not have perimeter fencing and emphasise on restriction of access of the nonresidents by putting up barricades at the entrance of the residential area. Gated communities are also guarded communities in essence, and several housing developers advertised their projects as gated and guarded community.

This paper aims at assessing the social implications of gated communities. It will firstly discuss the developments of gated communities in Malaysia, followed by the motivation behind these developments as surveyed in two Malaysian gated communities. This paper will examine the legality of such housing scheme in Malaysia and discuss the implications, real or potential, of gated communities.

DEVELOPMENTS OF GATED COMMUNITIES IN MALAYSIA

Presently, gated communities can be found in many developed countries such as the Australia, Britain, Canada, Singapore and the United States of America. Among the earliest gated community was in St. Louis in the United States of America in the late 19th century. In 2001, the Census Bureau's American Housing Survey concluded that there were at least seven million gated communities has certainly attracted potential house buyers and property investors to purchase properties in such developments.

Various studies have been conducted overseas to identify the main reason why gated communities are popular with the property buyers. For example, a study conducted in the States by Blakely and Snyder in 1995 revealed that 70 percent of the respondents responded that the key factor in choosing to stay in gated communities were because of security.³ In order to determine the main motivation behind living in local gated communities in Malaysia, the author conducted survey in two gated communities. One of the gated communities was situated in Sri Kembangan while the other was in Puchong. Both gated communities had perimeter fencing, single entry and exit point and guard house at the entry point of the area. The questionnaires were distributed to the residents on foot and by mail.

Based on the survey results, the author found that the main motivation for living in both gated communities was security. The respondents in both locations also valued privacy and the neighborhood environment offered by gated communities. However, when asked what influenced them to live in their present gated community, location still played a crucial role in their choice of home. Although security has a strong appeal in the choice of properties, the respondents would still take into consideration the location of the properties.

Apart from security, as mentioned before gated communities also offer exclusive usage of the facilities located inside the residential area, which are privately maintained under the management of the housing developer or the management company appointed by the developer or the residents. As access to gated communities is restricted to the residents, there is less traffic in the area. As a result, the residents do not have to worry about criminal activities such as snatch theft and abduction and the housing area is also considered safer for the children to play on the road.

Although gated communities are generally well-received in Malaysia, one of the major concerns regarding their existence is the legality of gated communities. While more gated communities are developed in the Klang Valley, it appears that the law is rather slow to catch up with such

developments.

THE LEGALITY OF THE DEVELOPMENTS OF GATED COMMUNITIES

The legal status of gated communities can be examined from two positions: the position before the amendments to the Strata Titles Act 1985 on 12 April 2007 and the position after. Generally, the operation of gated communities resembles the operation of strata-titled properties such as apartments and condominiums. The road and facilities available in strata-titled properties are

3 Blakely and Snyder, "The Importance of Security in the Choice of a Gated Community", Blake & Snyder, *Fortress America: Gated Communities in the United States*, (Washington D.C.: Brookings Institution Press, 1997), p. 126.

considered as part of common properties under the Strata Titles Act 1985 (hereinafter referred to as "the STA"). The owners of each parcel in properties with strata titles must sign the standard sale and purchase agreement in the form of Schedule H of the Housing Development (Control and Licensing) Regulations 1989.⁴ They have the responsibility to pay the fee for the maintenance of the common facilities after taking vacant possession of the parcels. The common properties, including the swimming pool, playground and road are for exclusive use of the residents.

Although gated communities resemble the operation of properties under the STA, prior to the amendments to the STA in 2007, there was no provision to accommodate landed gated communities. Reference could be made to the pre-amendment section 6(1) of the STA where the provision did not provide for subdivision of land in gated communities into land parcels to be held under strata title. The pre-amendment section 6(1) read as follows:

Any building or buildings having two or more storeys on alienated land held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels; and any building or buildings having only one storey on the same land shall be capable of being subdivided into parcels to be held under strata titles or into accessory parcels.

Section 6(1) of the STA only allowed for subdivision of building into parcels and did not apply to subdivision of land. As such, the exclusivity of the roads and facilities available to the residents of strata developments could not be extended to the residents of landed properties such as gated communities. The development of gated communities before the 2007 amendments did not conform to the STA. The housing developers would therefore have to rely on the National Land Code 1965 with regards to subdivision of land in gated communities.

Under the National Land Code 1965, in order to subdivide land for housing development, the proprietor of land, who is sometimes would be the housing developer, would have to submit their application for subdivision of land together with application for surrender and re-alienation, also known as *Serah Balik Kurnia Semula* or SBKS.⁵ This way, the land can be subdivided by the authority and re-alienated into separate lots before the lots can be developed and sold to the house buyers. This procedure also applies to development of gated communities. According to section 204D(1)(c) of the National Land Code 1965, a proprietor of land who wishes to surrender his land for the purpose of re-alienation by the State Authority under this section must submit an application in Form 12D together with, among others, a plan showing the lots to be surrendered together with a pre-computation plan showing the details of the portions and units to be surrendered (Asnida, 2009). In the pre-computation plan, the housing developer as the proprietor

⁴ Refer to Regulation 11(1), Housing Development (Control and Licensing) Regulations 1989.

⁵ The "Surrender and Re-Alienation – Special Provisions" were included in the NLC through s. 76 of the NLC (Amendment) Act 1984 (Act A587), which came into force on 25 March 1985. Refer to Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, *A Manual on the NLC*, (Kuala Lumpur: Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, 2002), p. 158.

will mark the open space area and road,⁶ and these areas are deemed to be surrendered to the government. The housing developer must get the approval of the pre-computation plan from the local authorities before it can be accepted and processed by the land office.⁷ The road and open space will become the properties of the State Authority. Once the open space has been gazetted by the State Authorities, it must remain open to the public. The public therefore have the right to use the roads and open space located in gated communities.

In fact, the closure of public roads by the housing developers and the residents in gated and guarded communities are found to be in contravention with several statutes in Malaysia. This includes the National Land Code 1965C, the Housing Development (Control and Licensing) Act 1966, the Housing Development (Control and Licensing) Regulations 1989, the Street, Drainage and Building Act 1974, the Local Government Act 1976, the Road Transport Act 1987 and the Town and Country Planning Act 1976. For example, barriers installed by the residents of the gated communities can be considered as obstruction under section 46(1)(a) of the Street, Drainage and Building Act 1974 and the local authorities have the power to remove such obstructions .

In 2007, the STA was amended by the Strata Titles (Amendment) Act 2007⁸ to, *inter alia*, cater for developments of gated communities. One of the vital amendments was done to section 6(1), which now reads:

Any building two or more storeys on alienated land held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels; and any land on the same lot shall also be capable of being subdivided into parcels each to be held under a strata title or an accessory parcel. (Emphasis added.)

Although gated communities now come under the purview of the STA, the amendments did not operate retrospectively to the already existing gated communities. The amendments also did not apply to guarded communities. Apart from the STA, the local authorities have adopted a strict approach with regards to application for developments of gated communities as well as guarded communities. The state of Selangor, for example, has come up with a guideline for application for gated community developments, as well as a guideline for application to convert an existing conventional neighbourhood to a guarded community. One of the requirements to convert an existing development into guarded community is to get 85 per cent consent from the residents. Presently, most of the existing gated and guarded communities are still considered as illegal. A newspaper report on 6 April 2010 revealed that Damansara Jaya Residents and Owners Association (DJROA) in Petaling Jaya was the only gated and guarded approved by the Petaling

⁶ Normally with red ink.

⁷ Circular from Ketua Pengarah Ukur dan Pemetaan Bil. 2/1993: Pelan Pra-Hitungan (Pre-Computation Plan).

⁸ Took effect on 12 April 2007. Came into operation in the Federal Territory of Kuala Lumpur and in the Federal Territory of Putrajaya through PU(B) 148/2007 and in the states of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu through P.U. (B) 149/2007.

Jaya City Council so far. The remaining 16 residents associations have yet to get the approval while other 28 residents associations did not even apply for the approval.⁹

SOCIAL IMPLICATIONS RELATING TO GATED COMMUNITY HOUSING SCHEMES

Apart from the legality of gated communities, another controversial aspect of gated communities is their social implication. Gated communities are associated with many positive and negative implications. As discussed before, studies have suggested that the main motivation for the existence of gated communities is security. This is foreseeable due to the high crime rate

reported in Malaysia, which have increased the fear of crime among the public. Gated community developers emphasise mostly on the security features of their development projects and are equipped with many state-of-the-art safety devices. There were reports that the implementation of the gated community concept has successfully reduced crimes in certain areas.¹⁰ Several gated community developments such as Aman Suria, Bukit Mayang Mas, Damansara Lagenda and Taman SEA, in Petaling Jaya, Selangor were reported to have lower crime rate compared to the housing areas without the facility.¹¹

As only the residents are allowed to have non-restricted access to the neighbourhood, gated communities can prevent potential criminals from becoming familiar with the area. Road closure by gated communities also translates to less traffic in the residential area, thus making it safer for children.

Gated communities have also been perceived to promote a stronger sense of community among the residents. Children in gated communities can go out and play safely in the neighbourhood due to the closure of roads to the public. As gated communities also encourage the participation of residents in their neighbourhood associations, it can be suggested that gated communities also promote healthy interaction between the neighbours.

On the other hand, gated communities also have the risk of instigating potential conflict between the residents in the gated community, and between the residents and the neighbouring nonresidents of gated communities. The local media reported that about 70 per cent of gated and guarded communities in Selangor were illegal¹² as they did not get the approval from the respective local authorities. Apart from being illegal, there were also dispute amongst the residents. The residents of conventional neighbourhoods who are keen to convert their existing residential areas to guarded communities must get consent from at least 85 per cent of the residents. With the consent, the residents can proceed to get a written approval from the local authority to erect a guard house and install a barrier at the entrance to the area, which will be

⁹ Low, Christina, "Nod for only one gated and guarded scheme", *The Star*, 6 April 2010.

¹⁰ Perumal, Elan, *et al.*, "Lower crime rate raises interest in gated townships", *The Star*, 10 May 2007.

¹¹ *Ibid.*

¹² Salina Zakaria, "70% komuniti berpagar di Selangor dilabelkan haram." *Buletin Utama TV3*, 15 and 16 February 2010.

operational from 12 p.m. to 6 a.m.¹³ However, since the residents need only get the consent from 85 per cent of the residents, there is always a risk that some of the residents might not be agreeable to this arrangement. From the many letters sent to the local newspapers, the residents who did not agree to this argued that they had to fill out a security form every time they want to enter the neighbourhood. They were also accused of being selfish for not wanting to pay the monthly security fees imposed on the residents. As a result, the community would be divided. In this sense, gated communities do not promote healthy interaction between the residents.

Apart from that, gated communities might also be resented by the residents who live in the neighbouring non-gated neighbourhood. Since some of the illegal gated and guarded communities do not allow non-residents to enter the neighbourhood or use the road in the area, the non-resident have to find other alternative routes to reach their destination. Unmonitored closure of roads can affect the flow of traffic around the area and cause unnecessary delay to motorists.

Another negative implication of gated communities is that they create a false sense of security. The residents of gated communities might take their safety for granted and would leave the safety and security of their families in the hands of the security guards. There have been

incidents of occurrence of crimes despite the presence of the security guards and the usage of closed-circuit television (CCTV) in the gated communities. For example, several break-ins were reported in an exclusive resort in Johor Bahru in 2007¹⁴ and in Sierramas, Sungai Buloh in 1999.¹⁵ In 2007, a gruesome murder of a nine-year old which occurred at a condominium¹⁶ proved that the existence of security guards would not guarantee that the area will be crime-free. Last but not least, gated communities are said to promote segregation between the have and have-nots. Research conducted by the author revealed that the housing price of gated communities in Kuala Lumpur were all above RM1,000,000 while in Selangor, the housing price were above RM350,000 (Asnida, 2009). This is not taking into account the maintenance fees payable by all house owners in gated communities. The price range for houses located in gated communities indicate that gated communities can only be afforded by those in high income group. The concern is that by allowing more gated communities to be developed in Malaysia, the government is denying the right of those from the low income group from purchasing affordable houses as gated communities are associated with high cost housing. Apart from the suggestion of economic segregation, another strong suggestion is that gated communities also promote racial segregation based on the mean monthly gross household income by ethnic group. The Chinese still have the highest mean monthly gross household

¹³ Selangor Housing and Real Estate Board, "Pembangunan Skim Komuniti Berpagar (Guarded dan Gated Community) di Negeri Selangor", 2007.

¹⁴ Farik Zolkepli, "Residents living in fear after robberies in exclusive resort", *The Star*, 18 February 2007.

¹⁵ *Dato' Soo Lai Sing v. Kumpulan Sierramas (M) Sdn Bhd & Anor* [2004] 3 MLJ 546.

¹⁶ Sagayam, Andrew, "Tragic news for housewife who went to work", *The Star*, 5 November 2007.

income with RM4,853, followed by the Indians with RM3,799 and the Bumiputera with RM3,156. This indicates that more Chinese have the ability to afford expensive housing in general, including houses in gated communities. If majority of a particular race choose to live in gated communities, it carries a higher risk of segregation between the races. Such seclusion would exacerbate the income disparity between the races and further reduce the level of interaction between people of different races, religions and financial backgrounds.

CONCLUSION

Gated communities will continue to flourish in Malaysia and so far there is no indication that such developments will slow down. Gated communities only provide a temporary solution to the high number of crimes in Malaysia and are not the ultimate solution to prevent crimes in Malaysia. Crimes cannot be conquered by isolating the neighbourhoods. Prevention of crimes requires the involvement and participation of the community at a broad level. Although the main motive behind developing gated communities is legitimate, gated communities also carry a number of negative implications as previously discussed. As gated communities isolate the residential areas and only give unrestricted access to the residents, it is also questionable whether such developments can be sustained for future generations without any adverse planning implication in the urban area. As the concept of gated community housing developments have been approved by the government through the amendments to the Strata Titles Act 1985, more studies need to be carried out on the implication of gated communities on the society; whether gated communities are the solution for prevention of crimes or whether it will one day be regarded as our generation's *faux pas*.

REFERENCES

Asnida binti Mohd Suhaimi (2009), *Gated Communities in Malaysia: Legal and Social Implications*, University of Malaya, LL.M dissertation.

Azimuddin Bahari (2005). *Regulatory and Practical Aspects of Gated Community Projects*. Seminar on Gated Community Projects: Regulatory and Contractual Issues, Kuala Lumpur, Malaysia.

Blakely, Edward J. and Snyder, Mary Gail (1997). *Fortress America: Gated Communities in the United States*. Washington. Brookings Institution Press.

Briffault, Richard (2002). *Protecting Public Interests in the Private City*. International Conference on Private Urban Governance, Mainz, Germany.

Nasser, Haya El. (2009). "Gated Communities More Popular, and Not Just For The Rich", *USA Today*, http://www.usatoday.com/news/nation/2002-12-15-gated-usat_x.htm, last date of access 18 May 2009.