

Developing Refined Laws Against Flood Disaster in Housing Estate in Malaysia: An Anthropological Approach in Land Use Planning.

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Abstract: The recent flood disasters in Malaysia have caused substantial losses of lives and properties. Efforts have been taken to control flood disasters. These efforts also include legal mechanism in the management of flood control to protect the rights of all victims. It is a trite fact that housing development projects are mushrooming in Malaysia. The aim of the government is to provide adequate quality and sustainable housing accommodation to citizens. It is evident that flood disasters have affected the well-being of residents in housing estates. Thus, it is necessary that flood disaster should be adequately controlled through concerted efforts including legal means. This paper intends to map in the early stage in developing refined law against flood disaster in housing estate; focusing on land and planning authority. Thus, discuss land and planning authority as this is essential part in providing safety to the public against floods issues in an era of increased complexity and uncertainty.

Keywords: Law; Development Plan; Land Development; Floods; Housing Estate in the title.

Introduction

There are many reasons leading to flood disasters, one of them is the mismanagement of forest and lands causing imbalance environmental elements which have caused the damaging floods. Thus, we should endeavour our efforts to control flood disasters and its consequences. These efforts include the legal and regulatory framework that can manage the human behaviours and conducts that ensure orderly manner in management of environment which are able to protect the rights and interests of all stakeholders who may be affected by flood disasters. It is indeed a trite fact that housing development projects are mushrooming in Malaysia due to the dynamic means provided by the government. The aim is to provide as adequate as possible housing accommodation to all of its citizens. Before housing estates can be provided there are laws and procedures that the developers need to comply with including the planning law, building law, housing development law and the land law through various federal and states' legislations. The purpose of these laws is to ensure that the purported housing development would be sustainable for the benefits of the public and the house residents. Although there are numerous laws governing the development of housing projects which purport to ensure its sustainability, there are still many housing estates that have been subject to flood disasters.

Floods and Surrounding Issues in Malaysia

It is evident that one of the reasons leading to flood disaster and mismanagement is due to inadequate coordination and insufficient integrated policies and practices (legal and administrative) between the State Authority, Planning Authority, Building Authority, Environmental Authority, technical agencies and Housing Authority on housing development projects which can contribute to the occasion of

floods in the housing estates. These agencies have separate jurisdictions and powers and thus issue of inadequate coordination arises. The conditions and requirements between and among these agencies are not similar and may be contradictory to each other. For instance, even if there is a view from technical agencies (Department of Environment and Department of Minerals and Geoscience) that certain location of the housing development project is not suitable for development and prone to flood, this view may not be adhered to by the land authority in the event that the land authority wishes to alienate the land for housing development projects (Aljunid, 2006).

It is opined that, the inadequacy is due to the separate constitutional jurisdictions possessed by the federal government agencies and the states' agencies in approving housing development projects. There are policies adopted by the federal government against floods in housing estates but these policies are not binding on the states' agencies. Hence, even though there are federal laws and policies, these laws and policies may not be implemented by the states, as states are not duty bound by these laws and policies. For example, the department of drainage and irrigation requires certain retention ponds be provided by developers in each and every housing unit, but this may not be required for the purpose of issuance of Planning Permission and Certificate of Completion and Compliance (CCC) by the local authority (state's agency) (Awang, 1997).

Further there is no legal provision in the National Land Code 1965 ('NLC')(on alienation of lands, category of land use, subdivision of land and imposition of conditions and restrictions in interest) that require the State Authority to refer to and be bound by the views of the technical agencies and the planning authority including the policies against floods in housing estates. This is enshrined in section 108 of the NLC. This section undermines the function of the planning authority. Thus, in the exercise of alienation of lands, subdivision and partition of lands and imposition of conditions and restrictions in interests for housing development projects, views of the planning authority on floods prevention may not be adhered to by the land authority.

There may be views from the planning authority that certain preventive and curative measures against floods must be complied with by the developers before the purported housing development projects can be implemented, but the views are not binding on the land authority or the State Authority to follow. Likewise, currently there is no mandatory provision in the Town and Country Planning Act 1976 (Act 172), the States' Planning Control Rules and the planning guidelines of the local planning authority in dealing with applications for planning permission, to refer to the relevant technical agencies for comments and views for instance views in face of flood disasters (Md. Dahlan, 2009).

As the highest authority in each and every state in Malaysia is the State Authority ('SA'), the SA is armed with jurisdictions and powers on very wide matters including lands and housing pursuant to the provisions under the Federal Constitution and the States' Constitutions. The composition members of the State Authority may also pose certain degree of problem. Usually the substantial number of members in the SA is from the same political party. SA is controlled by the Chief Minister. Any decision made by the SA may be restricted according to the wishes of the political party and thus decisions made are influenced by the political considerations, not to the views of the professional agencies be it the Federal nor States' agencies. These decisions may include measures for flood control (Md. Dahlan, 2009).

Land use control and planning against flood disasters can also be effective with the introduction of land digital data available in the land authority office. This data is statutorily provided in the National Land Code 1965 (16th Schedule and section 5D). It serves as a comprehensive data of the land that shall be recorded into a land database by an electronic technology containing land titles, images, documents or spatial and textual data. The digital data can facilitate the authority to make decisions relating to the relevant lands including the provisions of measures against floods and its consequences. Nonetheless, if there are inadequate cooperation and coordination among the federal

and states' agencies in the coordination of land use and planning control, the data may be incomplete and thus incapable of providing true information of the land in question. Thus, this will negate its effectiveness (Md.Dahlan, 2009).

It is becoming evident that many Malaysian have become frustrated and even angry at the state of the environment, especially the urban environment in Malaysia. At the most general level, opinions expressed in newspapers, mass-media and television talk show and seminar indicates that none of town and cities can be classified as shining example of the beautiful and pleasant cities of the world in same league as in developed countries.

Correlation Between Development Plans and Floods

In urban areas in the country are covered by the Local Government Act and many other laws that have been passed by the government authorities to make living in urban areas not only comfortable but also healthy and safe. Moreover, it also to enable the authorities to have the legal power to make consistent and civic decision, town planning, which incorporates land use planning, was introduced in Malaysia as early as the beginning of this century. It may be interesting to note that the term town planning was only coined in about 1907 in England and thus giving birth to a district professional activity in the regulation and control of land development. The politician in the Federated Malay States were so convinced that usefulness of such activity that they brought in Charles Reade to be the Government Town Planning Advisor in 1921. Reade, a New Zealander and one of the early follower of Ebenezer Howard and a crusader the latter's Garden Cities movement, was then working as a Town Planer in South Australia. He not only become first government Town Planner in the Federated Malay States, but also established a town planning tradition and machinery in this country. By 1923, he helped drafted one of the most comprehensive planning legislation to provide town planning the legal powers.

Today the main legislation regulating land use planning is the Town and Country Planning Act which provides the legal powers to the local authorities to regulates, control and plans the development and use of all lands and building within their areas of jurisdiction. In order to perform this role, the local authorities have to carry out two distinct tasks. One is the preparation of development plans and the other is to undertake development control. Under the Town and Country Planning Act, development plans are defined as made up of structure plan and local plans. The former is to be in the form of a written statement and accompanied by charts and diagrams stating the general policies of the councils on the future development and use of land and other development policies. These policies and strategies are broad brush in nature and individual landowners generally do not know the exact use which is permitted on their land.

Although the planners prepared the structure plan, those approving the draft plan are largely the politician. Furthermore, at the formulation stage, the municipal council councillors can and do contribute their views when they are occasionally briefed on the progress of the draft plan. Since the structure plan is approved by the State Planning Committee (SPC), the politician who is in this committee can also ensure that their views ae incorporated.

Equally significantly, by requiring that the structure plan be approved by the SPC, the system ensures that development plans of the state are well incorporated into the development plans of local authorities. It also ensure that the broad brush policy plan of the local authorities do not contain anything which are at logger-head with state policies. Therefore, although the local authorities are the local planning authorities, they are not altogether independent in their development policies and strategies.

The structure plan is complimented by local plans that are basically detailed tactical plans in the form of maps and diagrams showing in detail what can be built on individual piece of land. Such plan may be accompanied by illustration and other descriptive matters to provide more details. Unfortunately, there are still some debates on the content of local plans especially as regards to how much detail is to be shown. It should be noted that local plans usually cover smaller areas than a structure plan. As such, each local council area may be divided into several planning areas, each with a local plan.

The approving authority of local plans is the local authority itself. In other words, although local plans are prepared by the professional town planners based on their technical know-how and scientific rationality, the planner (i.e. the plans) also reflect the views and ideas of the president and councillors. It is therefore important to realise that the development plans ultimately contain the political bias of the councillors as a whole and idiosyncrasies of certain individuals.

Furthermore the normal process in the formulation of development plans includes briefings to the SPC before the local authorities officially approve them. As such, the local plans not only reflect the overall development policies of the state government, but also do not contain anything that go against its direction of development. At present, too little is really known about the relationships between the professional planners and politicians to say for certain who ultimately decide what. One thing is certain, students of town planning in this country must never assume that the product of planning are based on scientific rationality and universal planning principles.

Development Planning -Control and Management; What when wrong

In order to ensure that the policies and plans of the council are adhered to, the laws are very clear that anyone who wishes to undertake land development with local authority areas must obtain permission from the respective council. The process begins with the developer, usually through his architect, submitting an application to the council for permission to undertake land development. As a rule, the planning secretariat of the council sends copies of the application to the town planning department and other relevant department, including those on the state government and federal government.

When all comments from all those referred to are received, the town planner then tables the application together with the comments of the various departments, in the planning committee of the local council for consideration. If the application is approved, then it is taken to the full council meeting for approval. The council can approve an application or reject it or approve it with conditions. Usually the council follows the recommendations of the town planner. However, it can also overrule his advice. The final decision is by the council and not the town planner. As such, the composition of the councillors and the president is very important in the planning and development control processes. Unfortunately, this aspect of the development control process is not known to most people and as such public comments and criticism are often directed at the wrong persons or bodies.

One of the weaknesses in regulating urban land use is the lack of development plans, particularly local plans. Although most urban area is covered by structure plans, these are broad brush policy plans which are not useful without compliments of local plans. Unfortunately most urban areas still do not have local plans. Many local authorities may have prepared some local plans for areas under development pressure. But these are not useful because they are not gazetted as legal documents.

Development plans such as structure and local plan are official documents stating what ought to take place in the future. To have the weight of the laws, they must be gazetted as legal documents. Furthermore, before they are gazetted, the draft plans would have to go through approvals by the local authority (and other government departments as they are invited to be members of technical committees to advise the councils) and the process of public objections and comments. Gazette local plans not only restrict the hand of the owners (developers) but also those of the approving authorities.

If local authorities approve a development project which contrary to what is stated on the plan, it can be taken into the court.

Without gazette local plans, landowners (developers) are in the dark of what can be done and thus would try their luck or ability with the most outrageous proposal to maximise profit. Cultivating the goodwill of those in power to make decision will often go a long way to facilitate plan approval. With legal local plans, any proposal contrary to what is stated must go through a very strong process of amendment which includes hearing objections from affected neighbours.

Equally important, legal local plans also ensure that the existing residents have a good idea of what is expected in their neighbourhoods. One of the basic assumptions of successful town planning and urban management is that residents follow the rules and regulations that have been enacted for the common good. What is needed therefore is the formation of 'rational' and 'scientific' rules and standards.

Unfortunately, even the most casual observers, there many cases of non-compliance of rules, regulations and standards in Malaysian cities and towns. Typical responses have been more rules and higher standards and more enforcement and higher penalties. While easy to recommend and adopt in legislative bodies, these responses are seldom effective. So far limited comprehensive studies have been done on relatively high incidence of non-compliance. It is also not possible to go into details the possible factors of non-compliance with municipal rules and regulations and standards; too restrictive rules or too high standards as to make compliance too costly; difficult process to comply, such as having to wait for two years to get a simple permit; zero or low cost of transgression and "continent consent" meaning that one would not comply if he or she believes others are not complying.

In a way, it can be said that town and country planning Act is for ahead of its time considering the state of the local authorities in Malaysia (This can also be said of the 1923, town planning Enactment). The task allocated to the local authorities are clearly too much for them to perform considering their resources. However, it also possible to see the provisions of the Act as challenges. Unfortunately, there is no one to rise up the occasion and use the provision as justification to strengthen town planning at the local authorities and thereby enhancing the image and stature of the profession as a whole.

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