



Re-appraising Regulatory Framework of Planning and Land Law System towards Sustainable Development in Malaysia

Marlyana Azyyati Marzukhi, Dasimah Omar, Oliver Ling Hoon Leh

Faculty of Architecture, Planning and Surveying,
Universiti Teknologi MARA, 40450 Shah Alam, Malaysia

mlyana79@gmail.com

Abstract

This paper is produced from an initial background of a research and based on the outlined objectives: I) to assess the principles of planning law and land law systems in Malaysia as an instrument for sustainable development. II) to identify the shortcomings in the use of present legislative framework and approaches between Town and Country Planning Act 1976 and National Land Code 1965. The paper is purely based on literature review and the current understanding of the regulatory framework with further identification on key problems and conflicts that involved between both laws.

Keywords: Planning law; Land law; Sustainable; Development.

eISSN 2398-4295 © 2018. The Authors. Published for AMER ABRA cE-Bs by e-International Publishing House, Ltd., UK. This is an open-access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>). Peer-review under responsibility of AMER (Association of Malaysian Environment-Behaviour Researchers), ABRA (Association of Behavioural Researchers on Asians) and cE-Bs (Centre for Environment-Behaviour Studies), Faculty of Architecture, Planning & Surveying, Universiti Teknologi MARA, Malaysia.
DOI: <http://dx.doi.org/10.21834/ajbes.v3i9.70>

1.0 Introduction

According to the International Institute for Sustainable Development (2010), sustainable development means different things to different people, but the most frequently quoted definition is from the report *Our Common Future* (also known as the Brundtland Report):

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." Sustainable development focuses on improving the quality of life for all of the Earth's citizens without increasing the use of natural resources beyond the capacity of the environment to supply them indefinitely. It requires an understanding that inaction has consequences and that we must find innovative ways to change institutional structures and influence individual behaviour. It is about taking action, changing policy and practice at all levels, from the individual to the international.

The Town and Country Planning Act 1976 under the planning law and National Land Code 1965 which is under land law express the value judgment on the development of land should be given substantial weight. The dual legislation also gained prominence since it promotes effective use of resources to achieve sustainable development. Hence, there are cases with regards to the procedures and requirements of development planning and land administration under the laws inconsistent with each other. This paper presents an early research purely based on literature review in re-appraising the regulatory framework of planning and land law towards sustainable development in Malaysia.

2.0 Research Issues

In Malaysia, the planning and control of land development is exercised primarily by the local and state authorities. As land administration and town planning are carried out by the Land Office and the Local Authority respectively, conflict over land use planning may arise. The governance over land matter is also not coordinated because it is shared between two main agencies with each focusing on a different aspect of land development.

The Town and Country Planning Act 1976 is a comprehensive act in respect of planning law in the Peninsular Malaysian States. According to Maidin, A.J., (2012) land planning and development in Peninsular Malaysia is undertaken wholly within the provisions of the Town and Country Planning Act 1976 in 1995, and 2001 attempted to address pertinent environmental issues faced relating to sustainable development, such as preservation of trees and the natural topography.

Maidin, A.J., (2012) also stated that the Town and Country Planning Act 1976 is aimed at establishing an integrated relationship between the Federal Government and State Authorities on matters relating to town and country planning as laid down in the Federal Constitution 1957. The Town and Country Planning Act 1976 confer executive authority on the Federal Government over certain matters in relation to control and regulation of town and country planning. Despite the executive powers conferred on the Federal Government, it has minimal powers in respect of town and country planning since land is a state matter.

The National Land Code 1965 is the main canon of land administration and also contains provisions relating to zoning and land use planning in Malaysia. According to Ismail (2010),

it is the purpose of the Code to ensure uniformity of land laws and land policies with respect to land tenure, registration of titles relating to land, transfer of land, leases, charges in respect of land, easements and other rights and interests in land. In this regards, the policies are part of an integrated government initiative, not a stand-alone policy that forms a coordinated public policy framework, which are lingered by doubts and contention.

According to Omar, I., (2002) National Land Code 1965 embodied a practical way to administer land for development purposes, it has some implementation and integration problems. The main difficulty is that the implementation of the National Land Code 1965 is different in each state since they have differed urban land policy measures known as the State Land Rules. Land is a state matter (Article 74 of the Malaysian Constitution) and each state have control over its own land. The power of every State over land includes compulsory purchase (Article 83) and Malay reservation (Article 89) and any matters concerning all dealings in lands. There are also other legislation in the form of administrative circulars and executive committee rulings which determine the rules that govern the use and the development of land in the country. There are cases where the conflict of interests between federal and state authorities has led to unresolved situations over decisions to acquire land for development. To a certain extent, the relationship between federal and state governments may restrict the supply of land for development purposes. However, for the purpose of ensuring uniformity of law and policy, Article 91 of the Malaysian Constitution establishes the National Land Council chaired by a federal minister with representatives from various states (including Sabah and Sarawak). The main objective of this Council is to formulate a national policy for the promotion, control and utilisation of land throughout the country. Article 91 Federal Constitution stipulates its purpose to:

‘formulate from time to time in consultation with the Federal Government, the State Government and the National Land Code a national policy for the promotion and control of the utilisation of land throughout the federation for mining, agriculture, forestry or any other purpose, and for the administration of any laws relating thereto; and the Federal and States Governments shall follow the policy so formulated’.

Omar, I.,

(2002) mentioned that in order to streamline the national development of the country, Article 92 of the Malaysian Constitution gives the parliament additional powers in respect of national policies for development, land acquisition, improvement or conservation of the natural resources and the exploitation of such resources or the increase of means of employment in the area. As a result, this power was used to initiate and/or control the land development in various states through the empowerment of various government land development agencies and corporations.

As stated by Mustafa (2011), matters pertaining to zoning and land use planning it not specifically provided in the legislative lists of the Federal Constitution. However, under List II, State List, states are empowered to enact laws on matters pertaining to land, agriculture, forestry, and local government, outside the Federal Territories of Kuala Lumpur, Putrajaya and Labuan. Under List III, Concurrent List, both the federal and the state governments have the power to legislate regarding town and country planning. This is for the purposes of coordination and uniformity of policy and law on land matters.

In Malaysia, land policy has been the result of various successive legislative documents

which have been created to overcome numerous land related issues. This is perhaps due to the fact that since land is a State matter, each State has the power of drawing up its own policy. According to McAuslan (2003), equally the many and often conflicting uses to which land – sometimes the same plot of land – have given rise both to complex laws and serious disputes in many societies.

As outlined by Taib, M.S., and Siong, H.C., (2008), the Malaysian's town and country planning system therefore, should be able to adapt the changing needs and at the same time secure efficiency, effectiveness and simplicity in conception and operation. Towards this end, there should be a constant review of the policies and practices in town and country planning including those that is provided in law. According to Mustafa (2011), considering that a complex system of government applies in Malaysia, land policy and planning systems need to be implemented within a broader framework and under the supervision of the federal government for the purpose of uniformity.

As National Land Code 1965 and the Town and Country Planning Act 1976 govern the land development systems of Peninsular Malaysia, Leong in Awang (2008) asserts that the two separate sets of legislation on land use and development control administered by separate bodies have given rise to conflict between the authorities administering them. Conflicts, which arise from the two systems of control, have also weakened the utility of land and planning legislation as a means of land use control. This is because it can lead to the occurrence of breaches of condition and under utilization of land.

Wilcox in Awang (2008) on the other hand, suggests that there is a greater need to rely on the system of conditional title under the National Land Code 1965 to provide for a more effective method of control of use and development of land. He has questioned the wisdom that the system of conditional title under the National Land Code can operate against the system of planning control under the Town and Country Planning Act 1976 in the event of conflict

3.0 Planning Law and Land Law as an Instrument for Sustainable Development

Taib, M.S. and Siong H.C., (2008) stated that the government launched Vision 2020 a decade ago. The foundation of the Vision has laid out in its nine strategic challenges is for 'Total Development Doctrine'(2000). Vision 2020 stresses the need for economic development which is mutually reinforced with the concept of an economically just society. Thus, although economic growth is essential, the desire for growth has to be related to questions of stability, control of inflation, sustainability, raising the quality of life and other social objectives. Analyzing the role of physical planning is vital in understanding how planning can help to achieve a balanced development.

The physical planning therefore, encompasses the development plan system, which consists of four main levels of planning that is the National Physical Plan, Structure Plan, Local Plan and Special Area Plan. As mentioned by McAuslan (2003), there is widespread agreement that law has a vital role to play in managing the urban environment. It is highly significant that the Rio Declaration on Environment and Development adopted at the Earth

Summit in June 1992 laid considerable emphasis on the role of law in creating the appropriate framework for sustainable development.

Section 2A(2) of the Town and Country Planning Act (Amendment) 2001 outlines the function of Council:

“To promote in the country, within the framework of the national policy, town and country planning as an effective and efficient instrument for the improvement of the physical environment and towards achieving sustainable development in the country”.

Maidin, A.J., (2012) stated that this is the only provision in the Town and Country Planning Act 1976 where the term ‘sustainable development’ is mentioned. However, the Town and Country Planning Act 1976 is silent on the methods and procedures in implementing and promoting sustainable development. Even though, the Town and Country Planning Act 1976 is silent on ways to promote sustainable development, the Federal Department of Town and Country Planning introduced several mechanisms to promote sustainable development objectives.

Apart from that section 8(3)(a) of the Town and Country Planning Act 1976 provides that the draft structure plan for the State shall be a written statement formulating the policy and general proposals of the State Authority in respect of the development and use of land in that State, including measures for the improvement of the physical living environment, the improvement of communications, the management of traffic, the improvement of socio-economic well-being and the promotion of economic growth and for facilitating sustainable development.

In Malaysia, land policies are a set of rules in the form of written land laws aimed at solving land related problems as they have arisen (Goh Ban Lee, 1980). As such, environmental policies in Malaysia are mainly in the form of laws to guide and control environmental within the context of land development decisions. As stated by Ismail, M.S. (2009), the adoption of the land policy framework in Malaysia is Towards Sustainable Development through Excellence Land Resource Management and its policy statement is to ensure that land resources are utilised on a sustainable basis for the continued progress of socio-economic development of the nation. The National Land Policy framework could be envisaged as shown in the fig.1.

As mentioned by Ismail, M.S., (2010), a major consideration in the effective implementation of land policy and land use planning is the fact that land is a State matter. It is attractive to note that whilst there exist various pieces of land legislation applicable to the country as a whole, each State eventually decides what is best for itself. In some instances, this can be seen as an obstacle to national development and uniformity of policy implementation. It is apparent that the land policies that have evolved from the various legislative instruments have not considered the issue of sustainable development and management of resources in detail. It now imperative for the government to look into implementing the spirit of sustainable development and management of resources in all land related legislation. This will also bring the overall policy in line with the national development policies and programmes where one of the main facets is to give adequate attention to

environmental protection.

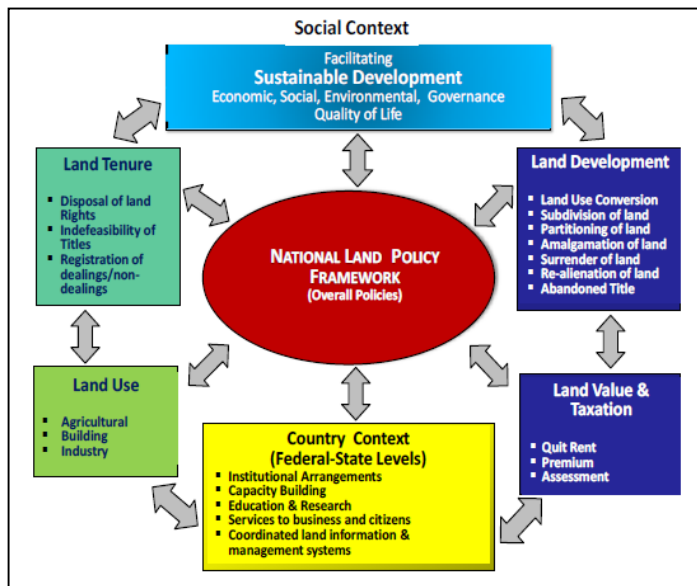


Fig. 1. Architecture Framework for the National Land Policy (envisaged by the Federal Constitution and the National Land Code)
 Source: Ismail, M.S., (2009)

The main constraint to integrate sustainable development considerations into development planning process is the lack of good governance and management, weak coordination between local authorities and land office, lack of comprehensive statutory instruments and challenges in implementation of related legislation. The Town and Country Planning Act 1976 can assume a vital role in planning, controlling and monitoring sustainable development. However, it requires effective implementation and enforcement mechanism in place. The improved and balanced system of town and country planning by introducing of integrated and uniformed laws relating to physical planning is crucial to integrate the principles of sustainable development. This should be seen as part of an overall effort to create a more humanistic and pleasant environment that will be enjoyed by all mankind.

4.0 Conclusion

For a development plan to be effective, it must be properly and continuously implemented. Nevertheless, the current legal framework on planning law and land law is used by different authorities focusing on different but limited aspects of land development. The paper concludes that the fragmented laws and division of powers over land matters will impede the

implementation of sustainable development in the country. The creation of a more integrated and coherent structure on sustainable development need to be taken in governing the dual legislation.

Acknowledgement

This paper is produced from an initial background study which is part of an ongoing research funded by Research Management Institute, Universiti Teknologi MARA, Malaysia. A comprehensive data collection will be conducted for future findings.

References

- Chalifour, N.J. et al (2007). *Land Use Law for Sustainable Development*. Cambridge University Press:UK. *Federal Constitution*. International Law Book Services:Selangor.
- Goh Ban Lee (1980), A Review of Land Policy and Policy Measures in Malaysia, *Habitat International*, Vol 4 No 4/5/6 pp 471-483.
- Ismail, M.S., (2009); *A Draft Framework for National Land Policy*, Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan), Putrajaya.
- Leong, Hoon Wah, "Ideology and Conflict in the Systems of Control of Use and Development of Land in Malaysia and Scotland", Master of Science dissertation.
- Maidin, A.J. et al (2008). *Principles of Malaysian Land Law*. Malayan Law Journal Sdn Bhd:Malaysia.
- Maidin, A.J. et al (2012). *Malaysian Town and Country Planning Law and Procedure*. CLJ Publication: Malaysia.
- McAuslan, P.(2003). *Bringing The Law Back In: Essays in Land, Law and Development*. Ashgate Publishing Ltd: England.
- Mustafa, M. (2011). *Environmental Law In Malaysia*. Kluwer Law International:Netherland.
- National Land Code 1965*. International Law Book Services:Selangor.
- Town and Country Planning Act 1976 (Act 172)*. International Law Book Services:Selangor.
- Awang, A., (2008). A Critical Assessment of Provisions of the Federal Constitution with regard to Federal-State Relationship on Land Law. Paper presentation at the *International Conference on Contemporary Issues of Law, Syariah & Legal Research*. Faculty of Syariah, University of Jordan, Amman, 14th December 2008. Retrieved March 2011 from http://eprints.utm.my/9697/1/AdibahAwang2008_A_critical_assessment_of_provisions.pdf
- Omar, I.,(2002). Rules Affecting the Land Development Process in Malaysia – A Review on Regulation of Environmental Impact Assessment (EIA). Paper presentation at the *8th Pacific Rim Real Estate Society Conference*.
- Lincoln University, Christchurch, New Zealand. Retrieved August 2012 from http://www.pres.net/Papers/Omar_Rules_affecting_the_land_development_process_in_malaysia.pdf

Ismail, M.S. Malaysia's Land Policy Framework. Retrieved August 2011 from <http://www.kptg.gov.my>
International Institute for Sustainable Development. Retrieved August 2011 from
http://www.iisd.org/pdf/2011/intro_to_sd.pdf

Ismail, M.S. & Anesh, G.(2010). Land Development Issues & Latest Initiatives Undertaken by JKPTG to Improve Service Delivery System of Land Administration. Paper presented at *Land Law and Property Development Conference*. Retrieved March 2011 from <http://www.kptg.gov.my>