



PLANNING MALAYSIA:

Journal of the Malaysian Institute of Planners

VOLUME 20 ISSUE 3 (2022), Page 295 – 305

THE DEVELOPMENT OF POLICY AND LEGAL FRAMEWORK FOR SOCIAL IMPACT ASSESSMENT IN MALAYSIA

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Abstract

Social Impact Assessment (SIA) is an assessment tool that assess the social effects of infrastructure and major projects and is conducted in many countries, including the United States, Australia, Canada, India, South Africa, New Zealand, and Japan. Malaysia requires such form of assessment for projects deemed to have social implications prior to obtaining planning permission from the local planning authorities. The requirement of the submission of SIA report as part of planning permission requirement necessitates from section 20B (2) of the Town and Country Planning Act 1976. Based on several studies, there are several legal issues arises from the SIA approval process, affecting various stakeholders. As such, this research aims to analyse the implementation of SIA from the Malaysia's policy and legal perspective using qualitative method of systematic literature review and content analysis. Analysis of literatures show that the SIA framework in Malaysia can be improved as to make the process of SIA approval to be more effective.

Keywords: Social Impact Assessment, Development, Malaysia, Legal Framework

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INTRODUCTION

SIA is one of the assessments to measure the social impact of major development to the community. The SIA assessment is a decision-making tool for the development control process as the impact of the proposed development could affect the quality of life of individual and the community. It is expected that the mitigation proposed in the SIA report would be able to reduce adverse effect affecting the community and create balance between social and physical changes resulting from the proposed development project. Vanclay (2003) defines SIA as an assessment that involves analysis, monitoring, and management of social effects, intended or unintended and either positive or negative impacts arise from a proposed development to the surrounding communities. This assessment not only aims to identify positive effects but also to reduce the negative impacts of the proposed development.

According to Burdge and Vanclay (1995), SIA is one of the essential documents that can assist the local authorities in their decision-making process in approving or refusing planning permission in the development control process. Its implementation of SIA framework, its analysis and scientific process is not merely a matter of legal and procedural compliance but can assist in identifying and measure various social benefits and adverse effects of a new physical development. In other words, apart from legal compliance, SIA can improve the benefits of a project from the social perspective, reducing costs and optimising mitigation measures.

In Malaysia, the approval process of the SIA report is under the purview of the Town and Country Planning Department (PlanMalaysia) at the Federal and State Authorities level. PlanMalaysia at Federal and State level would set up a committee to assess the SIA report and these agencies are the considered as the approving authorities of SIA reports depending on the categories of SIA report.

METHODOLOGY

This research employed a qualitative method, using library research and content analysis of books, articles, related laws, manuals, and reports that are relevant to the study. In term of SIA legal framework, table 1 lists the relevant documents which were analysed in this research: policies, plans, Acts, manuals, and guidelines that contribute to the development of SIA.

Table 1: Type of policies and legal framework

| Level | Policies and Legal Framework |
|---------------------|--|
| National | 5 th Malaysia Plan, 11 th Malaysia Plan, National Social Policy, National Community Policy |
| Local Plans | Local Plan Cyberjaya, Sungai Merab, Salak Tinggi & Dengkil |
| Manual & Guidelines | Manual Preparation SIA for Development Project 2012 & 2018 |
| Acts | Town and Country Planning Act 1976 (Act 172) |

Source: Policies and Frameworks in Malaysia

DISCUSSION

SIA POLICY & MANUAL

Given that the implementation of government policies would affect the general public in the long run, its formation and drafting of the Manual must take into account various social consideration and implications in determining the outcome and effects of the policies to the general public. As such, public interest and sustainable development objectives must be considered during the preparation of the policy and manual as to ensure social needs and the interests of various stakeholders are considered in the policy-making process.

The incorporation of social aspects in drafting policies related to land use can be seen through the execution of the social-economic surveys during the development plan provided by PLANMalaysia Federal (5th Malaysian Plan, 1986-1990). Consequently, SIA was adopted by PLANMalaysia in several local plans in 1998 such as Local Plan Hulu Langat and Local Plan Sepang (Dahlia Rosly, 2009).

The inclusion of SIA in local plans demonstrates the importance of this assessment for proper town planning. As local plans affect society, the amalgamation of SIA is an excellent alternative to avoid and reduce the damaging impact of proposed development projects on the surrounding community.

PLANMalaysia is consistent in continuing the effort to spread information and awareness on SIA to various government agencies via workshops, seminars, and

meetings. PLANMalaysia has also actively collaborated with local universities and development institutions to prepare and present working papers related to SIA (Dahlia Rosly,2009).

In addition, issues concerning these social components have been identified and discussed. It is agreed that the requirement for a social policy is crucial in developing a united and stable society (Department of Welfare). Subsequently, the Cabinet gazetted a social-based policy called the National Social Policy (NSP) on 19 February 2003 (National Social Policy, 2003). NSP is a social development policy founded on the central principles of nurturing high moral values and human capacity building. It seeks to achieve unity as well as social stability while strengthening national fortitude. The strategic plan to achieve these objectives is through the imposition of the condition of SIA implementation for all planning programs and public and private development (National Social Policy, 2003).

Another policy aligned with the NSP is the National Community Policy (NCP), approved by the Cabinet on 23rd November 2018. The primary goal of the NCP is to empower and encourage resident communities to take an active role in managing and maintaining public and common properties that form part of their residential area (National Community Policy, 2018) resulting in harmony and conducive living.

In 2015, Malaysia and 192 other countries adopted the 2030 Agenda for Sustainable Development. The agenda is a global commitment toward more sustainable, resilient and inclusive development, with 17 Sustainable Development Goals (SDG) (UN, 2015). Chief Statistician Malaysia, Dato 'Seri Dr Mohd Uzir Mahidin, agreed that Malaysia is committed to executing the SDG agenda (Berita Harian, 2019) as it is in line with the 11th Malaysia Plan (Department of Statistics, 2020).

The 11th SDG relates to sustainable cities and community development. Its mission is to make cities and human settlements inclusive, safe, resilient, and sustainable. Based on the SDG Indicator Report 2019, the level of air pollution around the community area in Malaysia improved between 2017 and 2018 (DOE). These precautions are essential in guaranteeing continuity between society and development, per the United Nations 'goals.

Before the global involvement of Malaysia in social policy, Malaysia has committed to considering economic, social, and environmental aspects in its national development plan. This practise did not only start in 1990 but has since been in place since its independence in 1957 (Department of Statistics,2020). Sustainability and inclusivity have been the main thrust of development in Malaysia.

Besides the national policies, the preparation and implementation of SIA are based on references and manuals providing guidance for project

proponents and SIA consultants in preparing quality SIA reports, which will aid in the decision-making process of the proposed development. The first reference was First SIA Manual published by the Prime Minister's Office in 2000 (SIA International Symposium, 2022). For the next two years, the SIA Handbook of Malaysia 2022 was released by the Ministry of Women, Family, and Community Development and the United Nations Development Program. According to Gaim James Lunkapis, the first draft was completed that year, remains as is today, and has not been officially adopted by PLANMalaysia. Nonetheless, SIA practitioners in Malaysia have used this book as a guide to undertake SIA works in Malaysia.

The following manual, named SIA Manual for Project Development, was published by the Social Institute of Malaysia under the same ministry (Social Institute of Malaysia, 2021). According to Dato' Seri Najib, this manual is one of the government's alternatives to propagate the SIA practice through planning and development matters in Malaysia (SIA Manual, 2012).

Prior to the amendment of the Town and Country Planning Act 1976 (Act 172) in 2017, there was no legal requirement to prepare and submit any SIA report prior to seeking planning approval from state authorities. As such, no comprehensive book or guideline about preparing an SIA report was released by the government. The previous manual only described certain things regarding SIA in Malaysia. In the past, however, several agencies have produced guidelines and procedures which required the inclusion of a certain degree of social impact assessment. For example, the Malaysian Criteria and Indicators for Forest Management Certification (MC&I) have required the Forest Management Unit (FMU) to refer to the Social Impact Assessment Guidelines for the Malaysian Sustainable Palm Oil (MSPO) for SIA and monitoring forest management operations in Peninsular Malaysia. The social impact of forest management is a significant consideration in the forest management standard (UPM, 2012).

In 2018, PLANMalaysia issued the second edition of the SIA Manual. Compared to the previous edition, the latest manual included more comprehensive information and guidelines on the background and preparation of the SIA report. For instance, the 2nd edition SIA Manual explains the SIA categorisation, implementation processes as well as the report evaluation process. Stakeholders are provided with a clearer view on the preparation of the SIA report.

The manual further distinguishes between the three development categories requiring an SIA report: SIA Category 1, SIA Category 2, and SIA Category 3. It is observed that the legal requirements for an SIA report for developments under SIA Categories 1 and 2 are stated under Act 172, but similar conditions are not found for SIA Category 3. The SIA Manual (2018) merely lists the examples of development projects under that category, such as night club,

cemetery areas, mining, main industry area, aquaculture project, plant, oil and gas filtration centre, and solid waste disposal sites.

Furthermore, if the local government and PLANMalaysia@State have identified any development project to be under SIA Category 3, it will be included under this category. This can be seen through the implementation of the state manual. PLANMalaysia@Selangor produced the first edition of its manual in 2019 (Selangor SIA Manual, 2019) while the second edition was published in 2020 (Selangor SIA Manual, 2020).

The manual explicitly lists the development projects under the SIA Category 3, such as worker placement centres, rental lines or reserve utilities, and railroads. It will give flexibility to the state authority in determining the SIA application from time to time.

Other states like Negeri Sembilan, Kedah and Malacca also have their own SIA manual. The one for Negeri Sembilan was approved by the State Planning Committee No. 3/2020 on 9 June 2020 (SIA Manual Negeri Sembilan, 2020) Kedah used the SIA manual beginning July 2020 (SIA Manual Kedah, 2020) and Malacca used the SIA manual beginning July 2021 (SIA Manual Malacca, 2021). Several states, such as Terengganu, Perak, and others, are still in the process of finalising their manuals. Although the manuals from these states are aligned with the SIA Manual (2018), there are differences, particularly for development under SIA Category 3, as it depends on the state's condition and demography.

Although the SIA Manual (2018) lists the category of projects, specific categories of projects are excluded from the Manual. For instance, a particular guideline relating to the palm oil industry for the Malaysian Sustainable Palm Oil (MSPO) prevails over the Manual (MSPO Guidelines, 2021).

LEGAL PROVISIONS (ACT 172)

The Town and Country Planning Act 1976 (Act 172) is the law which controls and regulates town and country planning in Peninsular Malaysia. Act 172 gained royal assent on 18 March 1976 and gazetted on 25 March 1976 (Act 172,2021). Act 172 has gone through several amendments. In 2001, Act 172 was amended through Act A1129 which inserted the provisions on the requirement on the publicity of the draft local plan. For instance, section 12A states that the local planning authority must ensure that publicity is given in its area to the draft local plan that will be prepared, its objectives and the purpose for its preparation (Act A1129, 2001).

Publicity is an approach through consultation with the community in preparing the SIA report. The role of the SIA is not merely for the approval of the state authority but will also assist to impart understanding and acceptance of the proposed project to the surrounding community.

It is believed that the SIA process contributes added value to the project planning, whereby the project will be deemed to be more social friendly as it has considered public opinion and will reduce the negative social impact on the community. Even though section 12A does not explicitly mention SIA, the publicity procedure through this provision can be used as input in the preparation process of the SIA report input (SIA Manual, 2018).

In the case of *Mohamad Yusof bin A Bakar & Anor v Datuk Bandar Kuala Lumpur* (2019), the court allowed the appeal of the appellant, a member of the public, to obtain technical reports such as the development proposal report, traffic assessment report, SIA report and others for a specific development project in Kuala Lumpur.

The respondent applied for planning permission for a development project around Taman Tiara Titiwangsa, but the surrounding community were not granted access to the reports involving the development. This case indicates that the public should have the right to be involved in the development process and to provide input for the proposed project through a publicity process.

In the context of the legality and implementation of the SIA, Act 172 was again amended through Act A1522 in 2017, making SIA reports mandatory for SIA categories 1 and 2. This amendment applies to Peninsular Malaysia and the Federal Territory of Labuan. However, it comes into operation in a State on a date to be appointed by the State Authority, with the concurrence of the Minister, by notification in the State Gazette (Act A1522, 2017).

To date, eight states; Selangor, Penang, Malacca, Pahang, Negeri Sembilan, Terengganu, Kedah and Perak have gazetted and implemented Act A1522 (Act A1522 Gazettement Status, 2021). As observed, the implementation is reflected in the SIA state manuals, as discussed above.

Section 20B (2) states:

“For the purpose of seeking the advice from the Council under subsection (1), the Federal Government and State Government department or agency shall submit to the Council the development proposal together with a social impact assessment report and other reports as determined by the Council.”

Therefore, in line with the amendment above, any developer or project proponent will be required to prepare the SIA report with other relevant reports for purposes of development approval. Act A1129 further covers SIA Category 2 development projects but does not mention the requirement of the SIA report. Table 2 lists the project developments according to the category of SIA.

Table 2: List of Development Projects

| SIA Category | Provision | Type of development |
|--------------|----------------------------|---|
| 1 | Act A1522: Section 20B (1) | <ul style="list-style-type: none"> • Any coastal reclamation, excluding reclamation for the construction of a jetty or beach rehabilitation. • Any construction of a major national infrastructure, including— <ul style="list-style-type: none"> (i) airports, seaports, inland ports, railway transportation networks, highways, power stations, dams and toxic waste disposal sites; and (ii) other infrastructure of national interest as determined by the Council. |
| 2 | Act A1129: Section 22(2A) | <ul style="list-style-type: none"> • The development of a new township for a population exceeding ten thousand or covering an area of more than one hundred hectares, or both. • Development for the construction of any significant infrastructure or utility; or • Development affecting hilltops or hill slopes in an area designated as environmentally sensitive in a development plan. |

Source: Act 172

RECOMMENDATION AND CONCLUSION

It is observed that even though the SIA legal framework in Malaysia is still lacking in certain aspects, it has the potential to develop with necessary political will and the demand by the public. Improvements can still be done to improve the legal framework and policy to ensure the SIA process can be implemented successfully.

In comparison to environmental impact assessment (EIA), which was only made mandatory in 1986 (Act A636,1986), the level of awareness of the SIA is still at the outset. The Department of the Environment (DOE) had also, in the beginning, struggled to develop and implement the EIA; however, through time, its reception and legal framework have greatly improved. It is hoped that if the

implementation of EIA can be replicated for SIA, it also may develop through the enforcement of Act 172.

Among the weaknesses identified thus far is that the absence of explicit provisions on SIA in Act 172 has inadvertently resulted in non-uniformity of SIA implementation by the states. It is recommended for this Act to provide an explicit provision to standardise the SIA implementation in Malaysia. Another issue is that Act 172 requires preparing SIA for categories 1 and 2 but does not regulate the approval, implementation, and monitoring process. It is also silent on the requirement of SIA for category 3. Thus, Act 172 needs to stipulate the requirement of SIA for category 3, as well as approval of the Manual, implementation, and monitoring. It is also observed there are no comprehensive guidelines in terms of SIA implementation in the current Manual, specifically on the approval process, enforcement after submission of report and criteria for the qualification of persons to prepare the SIA. Consequently, this can lead to confusion among the relevant stakeholders in preparing this report. To assist the stakeholders, the Manual should include a comprehensible process, beginning from preparation to the enforcement stage of SIA.

Besides that, the procedures under the Manual are only persuasive in nature. Non-compliance to the guidelines as proposed in the Manual will not render the SIA report void for the purpose under Act 172. The Manual is only regarded as soft law and is not binding on the project proponents. Therefore, to ensure the SIA is thoroughly implemented, parts of it must be included through the amendment of the Act. The manual or the Act does not list who is qualified to prepare the SIA. It is also recommended to include the criteria of qualified persons in the Act or manual.

It is further proposed that further analysis needs to be done to study the legal issues and gaps in SIA implementation, particularly in the monitoring process, to ensure that more recommendations by the public are adhered to by the project proponents. Henk Becker (2003) stated that SIA usually deals with multi-stage studies to explore the future social consequences of the projects. The impact of these studies will ensure a proactive stance on development outcomes. Therefore, the implementation of SIA needs to be enforced critically for an inclusive, safe, resilient, and sustainable environment, in line with Malaysia's commitment to the 2030 Agenda for sustainable development.

ACKNOWLEDGEMENT

The authors take this opportunity to acknowledge with much appreciation the financial support provided through the project that has been registered with IIUM Research Management Centre (Ref no: IIUM/504/RES/G/14/3/2/1/SPP21-072-0072).

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Received: 30th June 2022. Accepted: 12th September 2022