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## **DEVELOPING SPECIAL ECONOMIC ZONES (SEZs) IN MALAYSIA: A LAND USE PLANNING LEGAL PERSPECTIVE**

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### **Abstract**

Special Economic Zones (SEZs) is a known mechanism that policymakers commonly use to attract Foreign Direct Investment (FDI). However, there is a global mixed reaction towards its successful implementation with a few operational failures, especially from the legal framework perspective. Therefore, this paper aims to explore the land use planning legal issues encountered by the development of the Special Economic Zones in Malaysia. Two significant legal issues and problems focusing on the cases related to land use planning and land matters have been identified using qualitative textual analysis. Findings show that there are loopholes and weaknesses in the statutory plan and local authorities exercising their power on land use planning management related matters. Thus, understanding the legal cases from these two issues is essential in formulating the next course of action on how the legal and regulatory framework should be embodied and embedded in the land use planning practice and policy in the SEZs' development.

**Keyword:** Special Economic Zones, Land Use Planning, Development Control, Legal Aspect

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## INTRODUCTION

Economic development, without a doubt, is the backbone of a country. Economic growth will be the yardstick in determining the success of a nation. Any prospective domestic or foreign investors are among the primary contributor to economic policy. For a developing or less developed country, these investors' involvement is crucial to ensure that their economy can become more influential (Dorozyński et al., 2016). Foreign Direct Investment (FDI) is one of the potential tools to increase economic growth. Johnson (2006) discussed that FDI enhances the country's economic development, but the country also benefits from technology spill-over from the FDI that operates in the dynamic region. Most countries' policymakers have innovatively created many incentives to attract FDI, such as tax incentives, export processing zones, economic zone, tariffs, and subsidies. The implementation of FDI is assumed to create a remarkable impact on local economic development (Dorozyński et al., 2016; Sharif Karimi & Zulkornain, 2009). Thus, to spur the country's economic growth, policymakers should not only emphasise the local economy or investment flow only, but they should also invite more FDIs to the host country.

One of the critical policy mechanisms that has been implemented in most countries to attract investment, especially for industrial development, is the Special Economic Zones (SEZ). SEZ can be generally defined as "demarcated geographic areas contained within the border of a country where the rules and regulations of business are different from those that prevail in the national territory" (Farole & Akinci, 2011). Various rules principally deal with investment setting, international trade, taxation, customs regulation, and the regulatory system intended to be more politically lenient and administratively competent than other areas of that particular national territory (Farole & Moberg, 2017).

World Investment Report 2019 stated that more than 1,000 SEZs have been established in the last five years worldwide. It expected that at least 500 more be in the circle in a few coming years (United Nations, 2019). Figure 0.14 shows the rapid development of SEZ in almost half of the decade from 1975 until the year 2018. Thus, it can be said that SEZ is a *modus operandi* that has been implemented by many of the policymakers to boost up the economic development of the country. In fact, in term of economic development, establishing SEZs itself also involves physical and infrastructure development as similar to its definition of 'demarcated geographic areas within countries' (Deng et al., 2018). This indicates that SEZs do not only focus on economic growth per se; they also affect other aspects such as the involved areas' physical and social development.

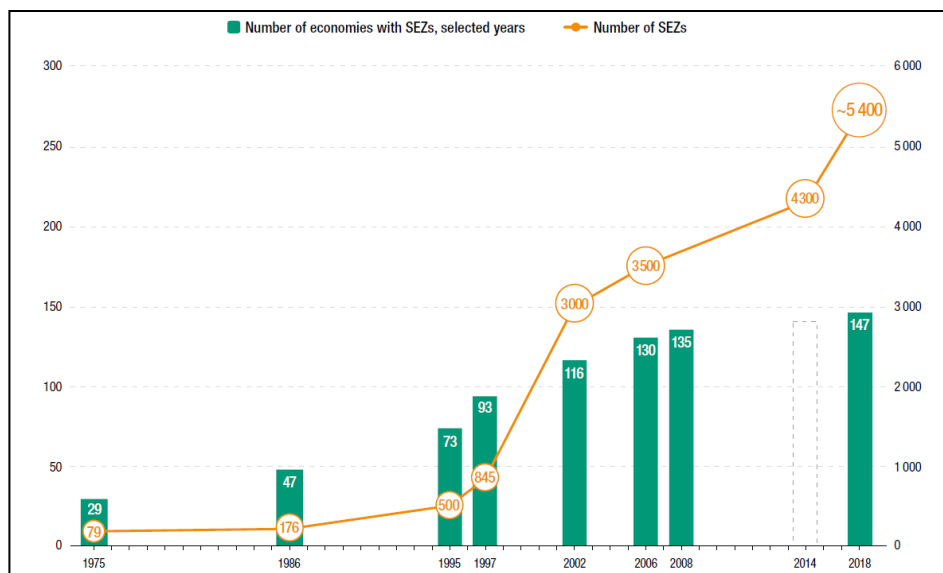


Figure 0.14 SEZ Around Globe (Source WIR 2018)

More often, SEZs development worldwide encounters several identical issues relating to land management matters, including the inefficiencies of development control and problematic governance in the perspective of legal and regulation. The spatial planning in Malaysia focuses on economic investment instead of land-use planning management that is inadequate to coordinate with the surrounding area's social, environmental and physical development, which subsequently has compromised the original planning intentions. The sustainable practice of physical development, which looked into the balance between economic and social and environmental aspects, would require a revision into the development policies as the existing practice often prioritise profit-driven development (Maidin, 2005; Masum et al., 2017). Therefore, understanding the legal issues related to land use planning in Malaysia is essential to improve SEZs' current and future development in Malaysia.

## DEFINING SPECIAL ECONOMIC ZONE FROM LAND USE PERSPECTIVE

SEZ can be generally defined as "demarcated geographic areas contained within the border of a country where the rules and regulations of business are different from those that prevail in the national territory" (Farole & Akinci, 2011). The different rules principally deal with investment setting, international trade, taxation, customs regulation, and the regulatory system to be more politically lenient and administratively competent than other areas of that particular national territory (Farole & Moberg, 2017). World Investment Report 2019 stated that

more than 1,000 SEZs have been established in the last five years worldwide and expected at least 500 more to be in the circle in few coming years (United Nations, 2019).

Special Economic Zones (SEZs) can be described as establishment with legal framework, creating geographic areas governed by a distinct regulatory regime – where taxes and bureaucratic burdens on business activity, especially the development of export infrastructure, are substantially reduced (Jenkins, 2014). One of the primary aims behind the development of SEZs was to create incentives for the private sector to invest in the "creation of world-class infrastructure – automated port facilities, fibre-optic networks, uninterrupted electricity supply" - that would eventually lead to export growth and job creation (Jenkins, 2014).

Even though for economic development, the establishment of SEZs also involves physical development as similar to its definition of 'demarcated geographic areas within countries'(Deng et al., 2018). This indicates that SEZs not only focus on economic growth per se, but they also affect other aspects such as the involved area's physical and social development. Therefore, as part of the physical and social development, there is also a need for land use planning to be applied effectively in SEZs' development.

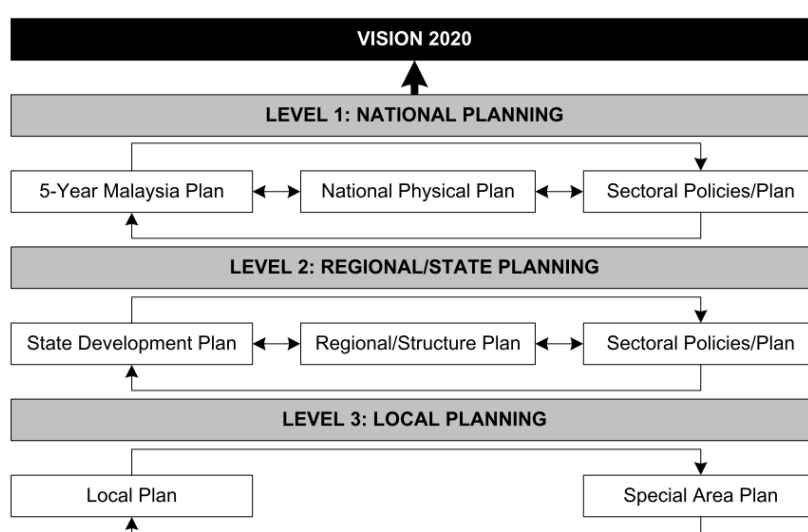
### **LAND USE PLANNING SYSTEM IN MALAYSIA**

Several provisions and legislation govern land use planning activities in Malaysia. Its legislation is strongly influenced by the British colonial ruler (Ahmad et al., 2013). Town and Country Planning 1976 (Act 172) ('TCPA') was established to ensure uniformity of law and policy regulating town and country planning practice in Peninsular Malaysia. Under List III of the Federal Constitution, the Town and Country Planning matters come under the 'Concurrent List'; both Federal and State government have a legislative power to enact the law on the matter related to planning. Unlike land matters, where it is under exclusive jurisdiction of the respective states pursuant to List II of the 9<sup>th</sup> Schedule to the Federal Constitution.

The evolution of the law and regulation can be tracked through three significant periods: (1) pre and during British Colonial, (2) post-Malaya independence, and (3) TCPA was passed in 1976. The earliest planning system established was in 1801 with the formation of Committee of Assessors in George Town, Penang, being the first city to have proper planning, including roads, drains systems, well planned administrative and institutional building throughout the city (Harun & Jalil, 2012; PLANMalaysia, 2020; Shukri et al., 2018)

As a federal constitutional monarchy, Malaysia is practising a three-tier administration system: the federal government, the state governments (consist of 13 states) and the local authorities (comprise of 149 local authorities) (Local Government Department, 2020). The federal and state government's jurisdiction

is spelt out in the Ninth Schedule of the Federal Constitution. Meanwhile, the Town and Country Planning practice appears in the Concurrent List, shared between the federal and state government levels. With the establishment of TCPA, the three-tier administration system is being recognised in controlling and regulating the town and country planning practice in Peninsular Malaysia. The Federal Government formulated the national strategic spatial planning to give a macro perspective of the land use and physical development of Peninsular Malaysia (Ministry of Housing and Local Government Malaysia, 2010)



**Figure 2:** Malaysia National Development Planning Framework  
 Source: National Physical Plan

The official planning system in Malaysia has three functioning tiers: (1) National Physical Plan (NPP) prescribed under Subsection 6B of TCPA – Spatial Planning of the entire country, (2) State Structure Plan (STP) prescribed under Section 8 until 11B of TCPA – general planning of the state land uses and development and (3) Local Plan (LP) prescribed under Section 12 until 16A-contains the details plan and written statement of the land uses under the designated Local Authority. The NPP and STP set up long-term development goals through the projected urban structure and land use layouts of the country and state. The LP delineates the boundary of an area planned for development and gives practical orientation, infrastructure framework, and land use regulations for plots within the local authority territory.

In this context, SEZs will significantly impact the local plan's preparation as it involves the physical, economic and social development within and surrounding designated area. The zones prioritise obtaining well-equipped

infrastructure, financial support, and benefits with preferential terms (Wahyuni et al., 2013). Therefore, special zones are important for economic development and have a significant role in regulating land use planning. Given that it involves optimum land use planning management, SEZs' outstanding role and impact raise concerns regarding land use planning system and regulation effectiveness.

### **LEGAL ISSUES IN LAND DEVELOPMENT**

SEZs is one of the well-known strategies to boost up the economic growth of a country. As SEZs' development often involves a large land area, the planning of SEZs needs to be carried out appropriately to avoid any shortcoming throughout the development and underutilisation of land. Thus, a thorough and holistic understanding of the legal issues related to land use planning is essential for the comprehensive and successful development of SEZs in Malaysia.

Land management matters are often identified as critical issues that jeopardise any development's success, including the SEZs. Regularly, the issues such as problematic governance on land matters and ineffective development control are encountered by stakeholders, developers, investors, or government agencies. This affects the development to experience facing obstacles due to the delay in the construction process and indirectly may become the reason for the withdrawal of investment in the area.

#### ***Development Control and Land Use Planning***

Part IV of the TCPA specifically highlights Planning Control. As highlighted in the previous section, planning control is an important mechanism to spur and foster development within the legal planning framework (Chan & Yung, 2004). In the Malaysian context, it is prohibited on the use of land or building other than in conformity with the local plan as described in Part IV, section 18 (1) TCPA. The enforcement of this law ensures that relevant development will be implemented according to the formulated plan. This is also to ensure that the proposed development will lead to the strategic plan and goal that have been established by the local authority in the local plan. Apart from conforming with the local plan, any development shall require planning permission from the local authority (section 21 (1) TCPA). In other words, the development will only be considered as 'legal' when the planning permission has been granted simultaneously with the conformity with the local plan pursuant to section 22 (3) TCPA.

Section 18 (1) TCPA highlights that the development plan shall be used as the tools and guidance for the local authority to control the development under their jurisdictions. The case of law confirmed this - *Awang Ismail & Ors v. Kerajaan Negeri Kedah & Ors* [2010] 3 CLJ 962 (High Court of Malaya at Alor Setar), where the court acknowledged that a gazetted structure plan had the force of law. In the case *Low Moh Sun v. Majlis Perbandaran Pulau Pinang*

LR/PP/15/92 [1992] (Penang Appeal Board), the Town Planning Appeal Board dismissed the appellant's appeal for the development that does not conform with the development plan. The appeal board decided it was not improper for the local planning authority to consider and be guided by the provision of the draft local plan for Tanjong Tokong. Thus, it is evidence that the development plan such as the Structure Plan or Local Plan enacted under Part III, TCPA shall be the guideline for the state and local authority in exercising their development control. It is further to improve the physical living environment, communication, traffic management and other related factors under their jurisdiction.

Similarly, this is also the principle of law in the latest case of *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* [2021] 2 CLJ 808 (Court of Appeal at Putrajaya). In this case, the appellant (residents of Taman Tun Dr Ismail (TTDI)) applied for a judicial review for (i) an *order of certiorari* against the first respondent's Conditional Planning Approval dated 28.2.2017 and a Development Order dated 13.7.2017, and (ii) an *order of mandamus* directing the first respondent to adopt the draft Kuala Lumpur Local Plan 2020 and to thereafter publish the adoption in the Gazette pursuant to section 16 of the Federal Territory (Planning) Act 1982. The third respondent (Menang Perkasa Sdn Bhd) has submitted for a planning application for mixed-use development comprises of one block affordable apartment and eight blocks luxurious service apartment in which it involves the material change of use and density of the said land, which is located just next to Taman Kiara Rimba. The said land was demarcated as a public open space, recreational and sports area, green area and city park, while under the Local Plan, Taman Rimba Kiara was demarcated as a city park and public open space with zero development intensity.

One of the main grounds on the objection are the proposed development plan contravened the Kuala Lumpur Structure Plan and Kuala Lumpur Local Plan in terms of land usage, zoning and density. The proposed development applied to change the current zoning from green area to housing and expected to increase the current density of TTDI from 74 to 979 persons per acres. Thus, this issue is one of the appellant's main objections as it will affect the zoning of the area, which indirectly impacts the density and traffic flow in the residential area. The Court of Appeal issued an order of *certiorari* quashing the decision of the first respondent, which granted the development order for the said development on 13 July 2017 on the basis that the Datuk Bandar was bound to have regard to the Comprehensive Development Plan (CDP), the KL Structure Plan and the KL Local Plan in consideration of any application for planning permission. The court further held that the decision (development order) reached is invalid when these plans were not considered in granting the planning permission. Quoted from the judgment of the case on the importance of local authority to comply with the statutory development plan in granting the planning permission, Mary Lim JCA said:

“If the Datuk Bandar, the 'authorised producer', so to speak of these plans, **does not consider these plans material considerations, it is of great worry who then will.**”  
(emphasis added).

Furthermore, the adherence to the TCPA can be seen in *Gunung Lang Development Sdn. Bhd. v Pengarah Perancang Bandaraya* (2017) MLJU 685 (Court of Appeal at Putrajaya) case. In this case, Gunung Lang Development Sdn Bhd (GLDSB) has submitted an application for planning permission to Majlis Bandaraya Ipoh (MBI). However, the application has been rejected due to its non-conformity with the development plan. Due to the rejection, GLDSB appealed against such rejection to the High Court of Malaya at Ipoh and further to the Court of Appeal (Putrajaya). Nonetheless, both courts dismissed the appeals. The High Court and the Court of Appeal agreed that TCPA is a public law that regulates the urban and rural planning matters in Peninsular Malaysia. The local authority's decision shall be deemed to be under the public law, not private law. Thus any allegation of wrong decision made by the local authority and application for remedy in respect of the application for planning permission must be done through a judicial review application pursuant to Order 53 of the Rules of Court 2012 or through an appeal to the Appeal Board pursuant to section 23 of the TCPA.

On the other hand, TCPA provides explicitly that planning permission will be obtained once the proposed development conforms with the development plan. Planning permission could also be rejected even if the proposed development is in accordance with the development plan. This has been reported in *Chong Co Sdn Bhd v Majlis Perbandaran Pulau Pinang*, [2000] 5 MLJ 130 (Appeal Board, Penang). In this case, the appellant applied for planning permission to develop a 12-storey building. The appellant has fulfilled all the requirements for the planning permission application. However, the appellant was informed to reduce the said proposed development to a five-storey building. The appellant later appealed and contended that they are entitled to obtain the planning permission since they have complied with all the guidelines prevailing when submitting the application. However, the respondent submitted that it would not be necessary for them to grant planning permission, even though the applicants have complied with the development plan's requirements. The respondent decided not to approve the application due to the height of the building. There was no gazetted local plan for the said area during that time, and the Penang Island Structure Plan 1987 is the only development plan that exists. The Appeal Board rejected the application on the basis that:



"Planning permission could be refused even if the development in respect of which permission is applied for would not contravene any provision of the development plan. And in the instant case, even if the development in respect of which permission was applied would not contravene any provision of the 1987 structure plan, planning permission could be validly refused on account of the provisions that the respondent thinks are likely to be made in any development under preparation or to be prepared, or the proposals relating to those proposals. **The development plan was definitely not the only matter to be taken into consideration.**" (emphasis added).

Similarly in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1 (Court of Appeal Putrajaya). The Court of Appeal was in the opinion that the statutory requirement stated in Section 22(2) of the TCPA, which highlighted the phrase 'shall take into consideration the requirements of the Development Plan does not mean that the local planning authority will slavishly adhere. In other words, the proposed development's conformity with the development plan is not a must in the planning application. In *Sunway City (Penang) Sdn Bhd v Lembaga Rayuan Negeri Pulau Pinang & Ors and other appeals* [2017] MLJU 755 (High Court of Malaya at Penang), the High Court agreed that in some instances, there should be an exemption on what has been gazetted in the development plan. For instance, where the development involves hill land area in which the area with a certain percentage of the slope is not allowed to be developed. Hence, in this situation, the court stated that since the area gazetted as a 'special project' under the structure plan, it may indicate a project with features distinguishing it from other (usually commercial) ventures. It also cannot merely be what the State Planning Committee or the Second Respondent (MPPP) per se claims to be. Therefore, even if there may be specific provisions in the development plans that the applicant shall follow, the requirement is not mandatory (Md Dahlan et al., 2015).

Besides, conflict of land use planning application between state and local government can be seen in *Subang Jaya Municipal Council & Residents v. Sime Darby* on Subang Ria Park's issues in Selangor Appeal Board (Ying, 2011). In this case, the Appeal Board was unhappy with the local plan process, which flawed in two perspectives; (1) local plan content and (2) the manner it was approved. The way it was approved showed non-coordination between the state and local planning authority. Initially, the local authority, the Subang Jaya Municipal Council, has zoned 72 acres as open spaces during the public Hearing of Draft Subang Jaya Local Plan 2020. However, under the gazetted Local Plan 2020, a portion of the open space comprised of 19 acres was converted into

housing and commercial zoning. The State Planning Committee (SPC) has given principle approval to Sime Darby to develop that portion of land (Ying, 2011). Thus, Sime Darby has applied for planning permission to assume that the SPC has principally agreed on their proposal to develop a portion of the private park operated by them. However, the application was rejected by the Subang Jaya City Council (MBSJ) with the stand that the area is zoned for open spaces (The Star Online, 2010). Thus, the decision made by the local authority to conform with the local plan and not jeopardising a portion of public use for a profitable development can be praised as this complies with section 18 (1) TCPA, which prohibits the use of land or building other than in conformity with the local plan. Therefore, even if there may be specific provisions in the development plans that the applicant shall follow, the requirement is not mandatory (Md Dahlan et al., 2015).

### ***Land Matters***

In Malaysia's context, the power of land matters is under the State Authority as stipulated in List II (2)(a) to Ninth Schedule of the Federal Constitution. Section 5 of the National Land Code defines 'State Authority' to mean the Ruler or Governor of the State. For practical purposes, the ruler, as explained in *Lebbey Sdn Bhd v Chong Wooi Leong & Anor And Other Application* [1998] 5 MLJ 368 (High Court of Malaya at Shah Alam) as a Ruler is acting upon the EXCO's recommendation, which has the authority to decide matters pertaining to the land, which includes the power of land alienation under NLC (Md Dahlan, 2012). The state authority has the absolute power to exercise the land alienation process as prescribed in Section 76 of the NLC.

An application for land ownership approved by the State Authority will be final, complete, and effective when the land title has been registered and issued to the applicant. This matter is also further supported through *North East Plantations Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor* [2011] 2 CLJ 392 (Federal Court, Putrajaya). The court decided that as long as the land title was not registered and issued to the appellant, then the lands still belonged to the state authority. The State Authority still have the power to revoke the approval of ownership of land that has been previously granted and reserves the right to reject premium payments and other payments related to it. Further, the court in majority (Abu Samah Nordin and Azhar Ma'ah JJCA, while Hishamudin Mohd Yunus JCA, dissenting) held that legitimate expectation cannot override the express statutory provisions of the National Land Code 1965. The appellant, in this case, had no legitimate expectation that titles would be issued to it when the State Authority had validly revoked the approval of alienation of the said land lots.

The same principle has also been decided through the case of *Piagamas Maju Sdn Bhd twn Pengarah Tanah dan Galian Negeri Selangor dan satu lagi dan permohonan yang lain*, [2013] 2 MLJ 97 (High Court of Malaya, Shah

Alam). The court stated that the State Authority's action to revoke the approval of the ownership of the land and return the payment of premiums and other fees related to it is legal because the land still belongs to the government unless the land has been registered to other owners.

Thus, looking into the abovementioned issues and cases, the revocation of the approval might indirectly impact the applicant. For example, relying on the land alienation's approval, despite not being the "registered owner" of the particular land, the applicant may begin to invest by planning the improvements of the land, preparation for the development proposal of the land and many others. Thus, the revocation of the land alienation after being pending for a lengthy amount of time may result in a wastage of time and money that, towards the end, the opportunity for the prospective landowner to develop the land can be denied. This issue can be seen in the case of *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor* [2016] 2 MLJ 495 (Court of Appeal Putrajaya), whereby the appellant has submitted the pre-computation plan to local authority and district office, however, the applicant was only being informed that the state authority had revoked the alienation four years after the application. On top of that, the alienation of the land has been approved ten years back when the appellant submitted an application to the state authority for the alienation of state land for mixed development. Thus, it can be summed that the revocation of land took almost 15 years after the land alienation application has been approved. In consequence, the appellant became aggrieved and suffered losses in their investment.

Furthermore, in this case, the act of revoking the land alienation's approval by the state authority without giving sufficient notice and reason can be perceived as an abuse of power. On the other hand, besides no details and reasons for the revocation, the said land had been alienated to some other commercial party. Further, the court had rejected the respondent's (local planning authority) argument that no obligation to give a reason for the said decision. The Court of Appeal held that the appellant has the right to know the reasons for revocation based on the principle of natural justice. Lord Mustill's judgment in *Doody v Secretary of State for the Home Department; and other appeals* [1994] 1 AC 531 *Doody's* case stated that:

"The giving of reasons may be inconvenient, but I can see no ground at all why it should be against the public interest; indeed rather the reverse. That being so, I would ask simply: is a refusal to give reasons fair? I would answer without hesitation that it is not."

There is no doubt that state authority can revoke the approval, but the question is the reason for the revocation and why at a very late stage. These

circumstances indirectly show a bad impression on the state authority's integrity and transparency in the land alienation exercise. The "absolute" power given to the state authority on land matters has indirectly led them to use power arbitrarily and unfairly.

Meanwhile, land legal issues related to the land category under the National Land Code 1965 (NLC 1965) and the zoning system under the planning system might arise. One of the conditions stipulated in NLC 1965 is on the categories of land use provided: agriculture (Section 115), building (Section 116), and industry (Section 117). The category of land uses will determine the permissible use of land activities. Meanwhile, under the local plan, the local authority has also produced a zoning plan within their territory as part of the land-use planning system. As the planning system also binds the NLC 1965, the category of the land use and zoning system in the development plan should be parallel or in tally with each of these two documents.

However, a conflict between these two systems has been recorded in *The Ordinary Co Sdn Bhd v Lembaga Rayuan Negeri Selangor & Anor* [2014 ] 7 MLJ 705 (Appeal Board of Selangor). Ordinary Co Sdn Bhd is the registered owner of a plot of land (Lot 16994) in Petaling Jaya in which the land use is categorised as "Building" with the express condition of "Commercial Building". Further, the applicant has paid the quit rent and assessment rate under "Building" rate. However, the land was wrongly zoned as an open space under the local plan (Rancangan Tempatan Petaling Jaya – Pengubahan 1), which was gazetted in June 2007 by the second respondent (Petaling Jaya Municipal Council-MBPJ). Later, in 2011, the applicant submitted a planning application for a land-use changes from open space to commercial use and subsequently to develop a five-storey building on that particular land.

Nonetheless, MBPJ rejected the application on the ground that the proposed development did not conform with the local plan. Thus, the applicant appealed to the Selangor Appeal Board on the decision by MBPJ. The appeal was dismissed by the board on the basis that Section 108 of the National Land Code 1965 does not apply to the local plan prepared under TCPA, and therefore the use of condition in a land title could not prevail over the land-use zoning gazetted in the Local Plan. The applicant was not allowed to change the zoning and develop the said land.

Dissatisfied with the Board of Appeal's decision, the applicant later applied for a judicial review at the High Court of Malaya at Shah Alam. The court has decided for MBPJ to consider the applicant's planning application in which the land has been categorised under the use of "Commercial Building", and MBPJ had wrongly zoned the said lot into open spaces. The courts decided that both respondents (the Board of Appeal and MBPJ) did not recognise that under the local plan, Lot 16994 was improperly zoned as an open space that contravenes the land use and express condition under the land title. MBPJ further denied the

planning application by deciding that the land cannot be developed despite being categorised under commercial land use in the land title. The court further held that 'the use condition in a land title prevails over the land-use zoning under the local plan pursuant to section 108 of the NLC and section 18(3) of the TCPA. The term 'restriction' in Section 108 of the NLC can be construed or interpreted as the restriction imposed by the landowner's local planning authority. Thus, the Board of Appeal has committed an error of law by concluding that the land use condition in the land title does not prevail over the land-use zoning under the local plan.

### **LESSON LEARNT**

Based on the overview from the legal cases that have been discussed above, it can be identified that a few issues on the land use planning and land matter may affect the development of SEZs in Malaysia. The issues on the conformity of the proposed development with the zoning of the local plan, a condition required by the local authority, is essential as it can directly impact the development of SEZs in Malaysia. Wahyuni et al. (2013) pointed out that SEZs' appropriate planned development is very important as it will affect the investors' confidence to do their businesses in the host country. The issue of the non-conformity of the proposed development might delay the planning permission process in which the applicant needs to submit for the material change of the land use if the proposed development does not conform with the zoning in the local plan. If there is a need for the zoning in the local plan to be changed, it will take a long process in which it has to go through the process of local plan amendment, which might take up to 6 months period.

On the other hand, despite ensuring that the land use planning system can support the SEZs' development in Malaysia, there is also a need to enhance the local planning authority power. Land use planning through the development plan is one of the tools used to assist the local planning authority in regulating and controlling development and land use planning (Maidin et al., 2009). The local planning authority is empowered to restrict and control the development based on the provision under TCPA and other related by-laws. However, based on the analysis made on the several cases abovementioned, there is still a loophole for the local authority to exercise their full rights as the 'regulator and manager' of their territory. In the country's overall development, there is a need for the whole development to be a plan-led development to avoid the 'ad-hoc' or short-term planning. Short-term urban planning practice for instant profit can drive into a degenerative development (García-Ayllón, 2015).

Further, there is a vital need to integrate the related agencies in preparing the development plan and other development control exercises. Looking into the case of *The Ordinary Co Sdn Bhd v Lembaga Rayuan Negeri Selangor & Anor* in which the local authority wrongly zoned the lot as 'open

space' despite being categorised for 'building' use. In this case, the local authority should consult with other departments and technical agencies, including the land office, Department of Environment (JAS) and Department of Mineral and Geoscience (JMGS), to prepare their development plan. The abovesaid case should not happen if the input and integration between these two main agencies, the local planning authority and land office, are well-synchronised. It was pointed out by Md Dahlan et al. (2019) in which the involved agencies should be coordinated and integrated to ensure that the inefficiency and ineffective control of land use can be minimised. Good coordination between related parties is very crucial to ensure the smoothness of these SEZs. Thus, the issue of inconsistency of the land use under NLC 1965 and Development Plan should be thoroughly reviewed during the preparation of the development plan.

In addition to the above, it is submitted that the development plans should be regularly revised and updated to ensure their data and information are current and that they can meet contemporary dynamic developmental issues and challenges. To further cement this, it is required that the relevant technical agencies such as the JMGS, Land Office, Department of Irrigation and Drainage (JPS) and JAS should prepare their own updated big data and inventory of relevant information under their respective jurisdiction portfolio for each district in Malaysia. The big data and inventory collected will be used to enhance and improve the development plan.

## **CONCLUSION AND RECOMMENDATION FOR FUTURE RESEARCH**

The Special Economic Zone (SEZ) concept, without a doubt, has been verified by most of the countries to boost their economic growth, i.e., China, India, Africa, Malaysia, United States, Europe and many others. However, behind all these successes lies many issues that can affect SEZs' execution in the long run. The lack of regulation or policy implementation for SEZ can somehow create much confusion and affect the investors' confidence in the host country (Najimudin et al., 2020). Issues and problems such as strategic planning of SEZ, bureaucratic redundancy in registration, the unattractive package offered, customs clearance, taxation disadvantages, foreign exchange and economic instability, long-process for development, immigration issues with foreign workers and many other items have indirectly hampered the overall SEZ environment and deterred the prospective investors. The problems have been documented in relevance to the SEZs worldwide, such as in China, Australia, Africa, the United States and Poland (Fenwick, 1984; Lord & Tangtrongita, 2014; Zhihua Zeng, 2019). Hence, the empirical analysis of the legal cases related to land use planning and other land matters is essential and useful for various reasons, which mainly help understand the texture and scope of legal issues related to SEZs' development.

Since land-use planning represents a system that the respective authorities manage, which will also impact individual rights, it is justified that a review mechanism to be established ensures that the power to execute the system is appropriately used. Therefore, when an application for the planning approval received an adverse decision such as refusal or with some condition that needs to be followed, which are not in their favour, those affected by the decision might choose to bring and review the decision to the "higher" decision-making authority. It is undeniable that a check and balance and equitable process is needed in the planning system; however, if the local authority who are more familiar with their territory cannot exercise their "full access" towards the plans that they prepare what their city will be, these interventions might give an impact on the land use planning system itself. Thus looking into the prospect legal issues in the development of SEZs from the perspective of land uses and other land matters can offer the course of action on how the law should be accordingly embodied into the development agenda in increasing the Foreign Direct Investment (FDI) in the country which has badly affected from the current Covid-19 pandemic.

Thus, drawing back on the abovesaid cases discussed in the earlier part, future research can go in-depth into two important aspects: the statutory plan's role and related stakeholders' responsibility. Future research is recommended to further explore the statutory development plan's role from the perspective of its information adequacy, equity and sustainable life and development goal. Based on the earlier discussion, the development plan is perceived to be comprehensive from the perspective of data provision and information update, which indirectly unable to face and meet the contemporary challenges and issues in development, including the issues and problems in SEZs. Hence, further understanding of the effectiveness of development plan to be balanced, equitable and able to meet the societal necessities and needs in regulating land-use planning is important as the fundamental knowledge in formulating SEZs regulatory framework.

On top of that, there is also a need to study the technical agencies' responsibility and the local authority. Land use planning management system is perceived as not well integrated between different stakeholders that cause non-coordination for land development. Understanding the relevant stakeholders' role, especially the technical agencies and the local authority, in providing the database for land development of relevant potential areas is crucial to ensure it able to meet all challenges, including the issues and problems in SEZs, and most importantly, avoiding hindrances throughout the whole development process. Coordination between the related agencies in providing the information, possibly in one single database, is essential for further and future reference by other relevant stakeholders, specifically the landowner.

Lastly, there is a need to understand the duty of local planning authority further, specifically balancing between the right for development and the right to

a healthy environment. The decision of granting planning permission by the local authority had been multiple times favouring profitable economic development such as the cases of *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* and *Awang Ismail & Ors v. Kerajaan Negeri Kedah & Ors*. Slight consideration had been put on future direct and indirect social and environmental consequences: regional disparity of spill-over development and environmental degradation, despite the statutory development plan had been gazetted. The development issues such as flood, soil erosion, human safety, human security, and landslides were clearly prevailed, possibly from local authority's weakness in providing their monitoring and maintenance work might jeopardise SEZs' current and future development in Malaysia. Therefore, further evaluation of the local authority's duty in practising balance development is recommended in the future.

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