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THE NOTION OF STRATA LEASE SCHEME IN MALAYSIA: A REVIEW OF THE EXISTING LEGISLATIVE FRAMEWORK

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Abstract:

In Malaysia, leased land registration is applied to all strata titles of a multi-story building. Hence, strata lease schemes are formed through this concept. As the primary references to strata laws, there is a limitation in the Strata Titles Act 1985 and the Strata Management Act 2013, where these laws do not contain specific provisions on the development of strata lease schemes. The National Land Code [Act 828] must be referred to create a lease registration on strata title. Since no law governs a strata lease scheme, there is an unsettling debate for new legislation to safeguard every party involved in the scheme's development. Therefore, this paper aims to review whether these laws are substantial enough to uphold the requirements for constructing and administering buildings of the strata lease scheme. The two objectives of this study are to determine what laws apply to strata lease scheme development and, secondly, whether these laws are relevant to support all parties' needs in the current development. The doctrinal and qualitative research methodologies are used to meet the objectives and cross-validate the legal reviews made through this study. It was found that nine laws are required to govern the development of a strata lease scheme. In conclusion, creating a specific law for a strata lease scheme concept may be optional. Still, one or two law updates may improve the laws' rigour and protect the parties involved in the strata lease scheme.

Keywords:

Lease, Legislation, Malaysia, Strata Lease Scheme, Strata Title.

Introduction

A strata lease scheme is one in which all strata titles have a registered lease. Unlike a typical strata scheme where the purchaser is registered as a proprietor, in a strata lease scheme, the purchaser is registered as a lessee on these titles. This gives the purchaser the right to possess and enjoy the purchased strata parcel for a lease period of 99 years. In 2022, there are 1,953,917 strata titles registered in Malaysia, spread across 22,898 schemes (JKPTG, 2022). However, only 31 strata lease schemes are in ongoing development in Penang (PTG Negeri Pulau Pinang, 2022) and 26 in Johor (PTG Negeri Johor, 2022).

The concept of strata title leasing on the strata scheme was first introduced in Penang in the late 1980s and has been in existence for over 40 years. However, it was not widely known until the concept was popularised at the national level with a similar development scheme in Medini, Johor (Zainal et al., 2022a; Abu Bakar et al., 2022; Abu Bakar & Azmi, 2023). Waqf land development in Penang has also drawn attention to the sale of strata residential units through a lease agreement between the purchasers and the Penang Islamic Religious Council (MAIPP).

There have been discussions about modifying Malaysian law to address issues related to the strata lease scheme. Experts have suggested revisions to the Malaysian legal framework to accommodate better the growing needs of the development of the strata lease scheme. However, there is a debate on whether to change existing laws or establish new statutory specifications for the strata lease scheme project. Some suggest a new Schedule for selling and buying lease schemes. Others propose creating a new certificate of the lease as proof of possession for the purchased strata lease units. Despite ongoing discussions, the Government has not yet pursued amending the current laws. The question arises whether a new law specifically for the strata lease scheme concept and development is necessary. If a new law is not required, the consideration shifts to whether the current law needs to be amended or updated to suit the needs of lease scheme concepts and applications. The study objectives aim to be achieved by delving into the Malaysian laws that regulate the development of strata lease schemes. The study examines these laws to determine how they relate to the concept of the strata lease scheme. It also discusses the relevance of these laws in supporting the requirements of strata lease scheme development. Ultimately, the study will determine whether new legislation or amendments to existing laws are necessary.

Literature Review

In the literature review section, the paper provides a concise overview of the strata lease scheme, how it came to existence, and the challenges associated with its development, with a particular focus on the relevant legislation. This discussion will aid the research in pinpointing any gaps in the literature, particularly concerning the legal dimensions of this subject.

Understanding The Strata Lease Scheme

A subdivided building is a stratified building with an individual title for each unit. This title is known as a strata title. The subdivided building is sometimes known as the strata building. A strata building is only one part of a strata scheme. A strata scheme is a stratified building with common properties, individual parcels, and accessory parcels, with each unit having its own strata title (JKPTG, 2021; Izanda et al., 2020; Faizal, 2014; Kamaruzzaman et al., 2010). When land leasing extended to housing and commercial property development, it gave new possibilities to create the strata lease scheme. A strata lease scheme is a strata scheme that has a registered lease on all strata titles. A strata lease is a deal whereby the registered title

proprietor allows a lessee to purchase and occupy the parcel for ninety-nine years. A lease transaction is accompanied by a lease agreement, a sale and purchase agreement, and sometimes both. The proprietor and lessee must execute the instrument of a lease, Form 15A, National Land Code [Act 828]. In supporting the creation of a strata lease scheme, Section 5, Strata Titles Act 1985, mentioned that the Act must be construed with the National Land Code [Act 828], hence making it possible for lease registration under Section 221 (4) of the National Land Code [Act 828] to be applied on the strata title. To provide a more comprehensive understanding of the strata lease scheme, a diagram (Figure 1) has been developed to illustrate its conceptualisation of how the strata lease scheme is formed and created.



Figure 1: Creating Strata Lease Scheme

Source: Author's Elaboration

Issues in Strata Lease Scheme Legislations

No one law explicitly governs a strata lease scheme. Understanding this scheme requires knowledge of other Malaysian laws (Zainal et al., 2022a; 2023a). The National Land Code [Act 828] explained the creation of a lease through registration. The Strata Titles Act 1985 deals with the issuance of strata titles. The Strata Management Act 2013 assists in managing the stratified buildings. Neither the National Land Code [Act 828] nor the Strata Titles Act of 1985 nor the Strata Management Act 2013 has provisions that specifically address the development of the strata lease scheme (Zainal et al., 2023a). Abu Bakar et al. (2021) study elaborated on the lease framework under the National Land Code [Act 828]. Nevertheless, if more time had been given, the study should have elaborated on how the National Land Code [Act 828] framework of lease works and connects with other legislation to support the concept of a private lease scheme, a similar terminology to the strata lease scheme.

Mohsin et al. (2020) suggest that a specific mechanism must be established to handle lease schemes. Therefore, an amendment to the National Land Code [Act 828] is necessary. Siang et al. (2015) have proposed creating a new law to cover transactions involving leases in strata titles. On the other hand, Zainuddin et al. (2021) believe that a new law would help to address the issues related to managing the lease scheme. Despite some experts suggesting the need for a new law to govern the dealing in leases and address problems in managing the strata lease scheme, a study by Zainal et al. (2022a; 2022b) has concluded that the current Malaysian law is adequate and may not require any amendments to govern the strata lease scheme. According to Zainal et al. (2022a), nine laws must be considered to oversee the development of a strata lease scheme. All legislation should be read together to understand the true nature of a strata

lease scheme. Since the laws cannot be referred to individually, Zainal et al. (2022) proposed a comprehensive legal framework that ought to be drafted. Zainal et al. (2022) and Abu Bakar et al. (2021) have asserted the necessity of a legal framework for both the strata lease scheme and the private lease scheme. Zainal et al. (2022) have proposed adopting a legal framework to enhance process control for future development. Meanwhile, Abu Bakar et al. (2021) have stressed the crucial role of a legal framework in validating the lease scheme concept. Zainal et al. (2022) further recommend conducting a cross-reference study on relevant Malaysian legislation to establish a comprehensive legal framework supporting the strata lease scheme concept.

Identifying Research Gap

Briefly, the Zainal et al. (2022) study revealed that the current law and statute could govern strata lease scheme development within the boundaries of process limitations in these laws. Abu Bakar et al. (2021) and Mohsin et al. (2020) viewed the need to amend current legislation for better process control. Zainuddin et al. (2022) and Zamri (2019) dwelled on the rising legal issues in strata building management. Teoh (2003) suggested that current law, particularly the Strata Title Act 1985, cannot facilitate strata scheme development processes. Chang (2020) and the National House Buyer Association (2021) discussed how current law might not provide enough protection for lessees as purchasers, is biased in favour of lessors, restricts purchaser rights to form committees, lowers property values, impedes inheritance rights, and opens up possibilities for developers to profit from the leasing concept in property development. Comments by Zainal et al. (2022), Zainuddin et al. (2022), Abu Bakar et al. (2021), Chang (2020), National House Buyer Association (2021), Teoh (2003) raised concerns about the legislation aspects of the lease scheme which include the irregularity in understanding the concept of strata lease building, the applied processes and legislation issues that arise within it.

The scholars' debates come to a reasoning on the inadequacy of the laws to implement a strata lease scheme development that favours all parties. Therefore, this study shall review the relevance of the current Malaysian laws in applying the strata lease scheme projects. To conceptualise the research gap found based on the literature study made earlier, Figure 2 is drawn to provide an overall picture of what is necessary to be focused on and addressed in this research.

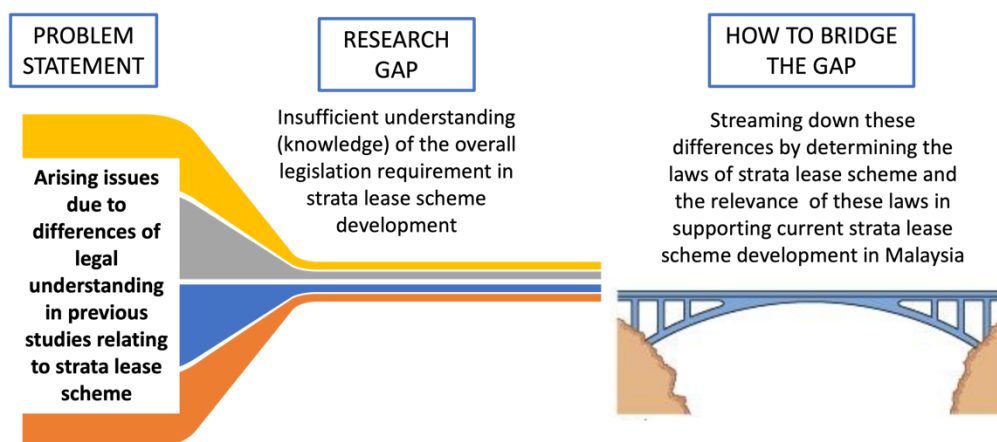


Figure 2: Research Gap

Source: Author's Elaboration

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Methods

This study employs two distinct approaches: the doctrinal research methodology and qualitative research. The doctrinal research method focuses on the spirit of the law rather than its application (Dobinson & Johns, 2017). In contrast, qualitative research, utilising case study approaches, aims to explore legal issues from the perspective of social reality. The qualitative research approach scrutinises the extent to which legal institutions meet societal needs, as well as how the law has been applied and enforced. On the other hand, the doctrinal research method centres on comprehending specific law provisions. In the first phase of the research, the doctrinal research method examines the nine Malaysian statutes recommended by Zainal et al. (2022). Statutory materials, regulations, and case law are primary data sources. The nine legislations reviewed include the National Land Code [Act 828], Strata Title Act 1985, Strata Management 2013, Trustees Act 1949, Federal Constitution, Probate and Administration Act 1959, Small Estates (Distributions) Act 1955, Town and Country Planning Act 1976, and Housing Development (Control & Licensing) Act 1966.

The second phase of the research involves a case study approach focusing on selected strata lease scheme projects in Malaysia. The cross-sectional data were gained through multiple interview sessions with practitioners in local authorities and agencies responsible for overseeing the development of strata lease schemes in Penang and Johor. The insights gathered from these interviews comprised the case study. These interview inputs were the primary data in determining the laws relevant to the strata lease scheme. The analysis of all primary data determined the legal requirements of the strata lease scheme and assessed whether the current laws are sufficient to support ongoing lease scheme development.

The findings in this study are based on the thematic analysis conducted on the nine Malaysian laws suggested by Zainal et al. (2022). This discussion explores how these laws are related to the strata lease scheme concept. The specific provisions of these laws were selected based on input from interviews with respondents who have experience applying them to the development of the strata lease scheme.

Findings and Discussion

The following text provides a detailed explanation of the laws relevant to strata lease scheme development. The study's findings are based on a thematic analysis of inputs provided by respondents, focusing on laws referred to by the participants. The relevant laws are categorised into themes significant to the nine laws of the strata lease scheme. These themes were cross-referenced to the doctrinal law review conducted earlier. In the upcoming discussion, we will assess the relevance and necessity of these laws for governing strata lease scheme development.

National Land Code [Act 828]

Creating Strata Lease Scheme Through Registration

A strata lease scheme shall consist of a purchaser registered as a lessee. An instrument of a lease, Form 15A of the National Land Code [Act 828], must be presented to the Land Registrar for registration. Only when the instrument has registered a memorial of the lease regarding the parcel will it be reflected in the strata title. The registered lessee or trustees may sell their strata unit to a new purchaser by transferring the balance lease term using an instrument Form 14A of Section 218(1), National Land Code [Act 828]. A strata lease scheme only exists when a lease is registered onto a strata title, where lease registration involves all units in the scheme.

Creating a lease on a strata title is the significant intention in creating a strata lease scheme. This intention includes selling a strata unit to the purchaser through a sales and purchase agreement with a lease agreement between the landowner and lessee. It is crucial because, by law, a strata lease scheme only exists during the planning approval or building construction stage. However, once the issuance of strata title on each parcel is completed, and all strata titles in the strata scheme are meant to be registered with an instrument of leasing, then the strata lease scheme will be lawfully formed.

Indefeasibility of Registered Lease

Section 91(1), Section 91(2), and Section 340(1) in the National Land Code [Act 828] are crucial provisos to the formation of the strata lease scheme. Section 340(1) in the National Land Code [Act 828] clearly states that a registered lease on a strata title should not be challenged for its legality. The registered lease of a strata title shall be forced if the lease period is required and shall not be revoked by any party. Section 340(1) of the National Land Code [Act 828] explained that for those whose name is on any lease at the time being registered, this registered lessee or trustees' name is protected by law, far from indefensible. The indefeasibility of the title may come into doubt when the condition of Section 340(2) comes into the picture, where the instrument of lease presented is void, or when there is a forgery.

Strata Title Act 1985

The Strata Title Act 1985 focuses on the application process of building a subdivision, registration of strata title and provisional block title, the collection process of parcel rent, the application process of division or amalgamation of parcels, and termination of subdivision of subdivided building. Section 7 of the Strata Title Act 1985 obliged the original land proprietor to the process of subdivision of the building.

Construing with the National Land Code to Create a Lease

Section 5(1) of Strata Titles Act 1985 says that Strata Titles Act 1985 should be read and interpreted with the National Land Code [Act 828]. Section 5, Strata Titles Act 1985, allows land leasing under the National Land Code [Act 828] to be applied to the strata title. The Strata Titles Act 1985 has no rule or provision to facilitate lease creation for strata titles. The dependency of the Strata Title Act 1985 on the National Land Code [Act 828] has allowed dealings and registrations of a lease to be implemented to unit parcels of a subdivided building.

Why Subdividing the Building Process is Important

As property prices continue to rise, some suggest the option of leasing from original property owners for a fixed period. However, suppose the owner only wants to lease to parcel owners without transferring ownership. In that case, a discussion may arise regarding their need to apply for building or land subdivision under Section 7 of the Strata Titles Act 1985. It is important to note that leasing falls outside the Strata Title Act 1985 scope. Hence, building or land subdivision under the Strata Title Act 1985 is optional. According to Abu Bakar et al. (2021), the National Land Code [Act 828] allows for a maximum lease term of ninety-nine years for leasing a whole land, while leasing a part of the land is given a maximum of thirty years. If a person buys a strata unit in a high-rise building, they can only get a maximum lease term of thirty years because the developer only leases out part of the land (Siang et al., 2015). Therefore, applying for a building subdivision under Section 7 of the Strata Title Act is necessary to develop a strata lease scheme. This process involves issuing strata titles to each parcel, which allows for leasing a whole parcel with a maximum term of ninety-nine years. By

Section 5 of the Strata Titles Act 1985, it is possible to register the lease of an entire land under Section 221(3)(a) in the National Land Code [Act 828] to the strata title. Under the lease scheme, once the development of the building is complete, the developer must transfer the lease to the purchasers.

Strata Management Act 2013

Various Definitions of a Purchaser, a Parcel Owner, and a Proprietor

Section 2 of the Strata Management Act 2013 gives three definitions of a purchaser. First, a purchaser is the buyer of a strata parcel. Secondly, a purchaser is a person with interest as a buyer; thirdly, a purchaser is a parcel owner listed in the parcel owner register as required in Section 30(1) of the Strata Management Act 2013. A parcel owner is defined as a purchaser or developer with unsold parcels, as mentioned in Section 2 of the Strata Management Act 2013, while a proprietor is a registered proprietor as prescribed in Section 4 of the Strata Title Act 1985.

Forming a Committee

Section 17(1) of the Strata Management Act 2013 requires the formation of a Joint Management Body within twelve months after delivering the vacant possession to all purchasers. Section 17(4) explained that the Joint Management Body must consist of purchasers and the developer. The nomination of the Joint Management Body members is through the first annual general meeting. The act allows the formation of a Joint Management Body among the strata lease scheme's purchasers. Once strata title is issued to all parcels, the Joint Management Body must be dissolved to form the Management Corporation. However, the Strata Management Act 2013 only recognises the proprietor of the parcel as the owner to create the Management Corporation. While the meaning of the proprietor in Section 2 of the Strata Management Act 2013 is the registered proprietor of strata title as prescribed in Section 4, the Strata Titles Act 1985

A Single Proprietorship Management

In a strata lease scheme, the original land proprietor is the registered proprietor of all strata parcels. As such, the purchaser is not considered the proprietor of the strata title. The Strata Management Act 2013 only recognises a management corporation member as the parcel's registered proprietor. Since there is no transfer of proprietorship in a strata lease scheme, the original land proprietor remains the proprietor for every strata title. Therefore, forming a management corporation is impossible among purchasers who later become the registered lessee on the strata title. If a strata scheme has single ownership, the Second Schedule of Subclause 2(3) allows the sole proprietor to be acknowledged as a Management Corporation without forming a physical team. Due to this requirement of the Second Schedule of subclause 2(3) in the Strata Management Act, most land owners in Penang manage and administer their strata lease buildings independently. Despite the apparent limitations of the Strata Management Act 2013, it is still utilised to manage strata lease schemes in Penang (Zainal et al., 2022).

Lessee Has the Same Rights to Tribunal

As the purchaser of the parcel in the strata lease scheme, the registered lessee or trustees have the same right to apply to the Strata Management Tribunal for any damage claim or other disputes. Section 107 of the Strata Management Act 2013 lists a purchaser as a party who can fail any claim to the Strata Tribunal. Section 32(7), a purchaser as a parcel owner may apply to

the Tribunal for a damage claim due to house rules or any other issues regarding joint body management.

Trustees Act 1949

Trustees Act 1949 holds significant ground on the rights of strata unit purchasers in any strata lease scheme. The National Land Code [Act 828] and the Trustees Act 1949 have similar provisions regarding the appointment of trustees, the number of appointed trustees allowed, and the survivorship within trustees. Hence, the rights of trustees are secured by these two legislations.

Appointment of Trustees

Section 3 of the Trustees Act 1985 defined an instrument as a written law. Specifically, under the National Land Code [Act 828], an instrument to appoint trustees is Form 15A or Form 14A. Form 15A of Section 221(4) is used to create a lease, and Form 14A of Section 218(1) transfers the lease. As for the Trustees Act 1949, an instrument to appoint trustees shall be a document that creates trust, such as a trust deed or a trust agreement. Similar provisions exist in the National Land Code [Act 828] and the Trustees Act 1949. Section 225(2), National Land Code [Act 828], explains that if a lease is given to a person, this person will be registered as a lessee, and if there is more than one lessee, then these two or more lessees are to be registered as trustees. Subsection 344(1) of the National Land Code [Act 828] mentioned the appointment of trustees enforced through the registration of an instrument. More importantly, these appointed trustees in the National Land Code [Act 828] have equal rights on their property as good as those appointed trustees in the Trustees Act 1949. Regardless of which legislation trustees are appointed to, they are bound to exercise their rights on behalf of one another (Halim & Mohd Noor, 2013). Trustees exclusively holding the land jointly and accordingly for one another (Section 345, National Land Code[Act 828], Section 39(1)(a) & (b) of the Trustees Act 1949 explains that four persons are the maximum number of trustees allowed to be appointed; Section 40 (1)(a) of the Trustees Act 1949 describes the appointment of trustees by an instrument of trust, Section 40 (1)(b) of the Trustees Act 1949 tells that surviving trustees may nominate a new trustee and Section 45 (1)(a) & (b) of the Trustees Act 1949 explains the court can make the appointment of trustees.

Survivorship

Survivorship among trustees is explained in the National Land Code [Act 828] and the Trustees Act 1949. As per Section 345(1) of the National Land Code [Act 828], if trustees hold an interest (such as a lease), it is held jointly, and in the event of the death of one trustee, the interest is passed on to the surviving trustees. Similarly, the Trustees Act 1949 also states that in case of the death of one trustee, the remaining trustees (known as surviving trustees) will continue to hold trust in each other and exercise any power related to the trust as initially appointed.

Federal Constitution

Every law made in Malaysia must comply with the fundamentals of the Malaysian Federal Constitution. To allow the development of strata lease schemes to work well within Malaysian law, it must fulfil the principle of the constitution. The first principle stands under Article 8(2) of the Federal Constitution. Article 8(2) explains the equality rights of all citizens of Malaysia. In which there is no discrimination against citizens concerning the law on the acquisition and disposal of property. It is supported by Article 13(1) of the Federal Constitution regarding no

such property belonging to a citizen being dispossessed or deprived of ownership. If a property needs to be compulsorily acquired by the Government, adequate compensation must be given to the owner, as mentioned in Article 13(2) of the Federal Constitution.

The second principle is that all land, including strata parcels, is managed within the state government's authority. Every state in Malaysia administers and governs all development processes regarding lands and strata parcels. Coincide with Section 40 of the National Land Code [Act 828], where all state land belongs to the state authority. The ninth schedule of the Federal Constitution lists the separation of power and jurisdiction between the federal and the state governments, where land matters lie within the control of the state government. Although there is power separation between the Federal and the State Governments, the parliament has all rights to constitute law on land and strata parcel to ensure consistency in implementing law and policy in every state. Article 76(4) of the Federal Constitution mentions that the parliament's power to make law includes land tenure, lessor and lessee rights, title registration, and dealings, including transfers, charges, leases, easement, and other interests regarding land and parcel.

Probate and Administration Act 1959

The Probate and Administration Act 1969 was enacted to oversee the administration of the deceased's estate. Administration of the deceased's estate includes paying off all debts and dividing the assets among the inheritors according to the will or a trust deed. The court may nominate an administrator through the Grant of Letter of Administration if a deceased is without a will. Further, the court may grant an executor through the Grant of Probate according to the testator's wish in his will.

The National Land Code [Act 828] allows a registered lease to be transferable and heritable. In the case of a strata lease scheme, a registered lease is an interest that becomes the estate of a deceased. However, the administration of the deceased's assets is allowed only through the Probate and Administration Act 1959 or the Small Estates (Distribution) Act 1955. Part V and Part VI of the Probate and Administration Act 1969 explained the process of distributing the deceased's estate, including an interest in the registered lease, within the powers and duties of the executor or administrator. A Grant of Probate or a Grant Letter of Administration is granted by the court and is registered by the land registrar as permitted by Section 346, National Land Code [Act 828]. Section 346(5) of the National Land Code [Act 828] requires a representative of a deceased to be registered onto the strata title before any estate is transferred. Once the representative is registered onto the strata title, following Section 60(3) and Section 60(4) of the Probate and Administration Act 1969, an executor or an administrator (with the permission of the court) will nominate a new lessee or trustees among the inheritors. The inheritors are the beneficiaries of the deceased. Nomination of lessee or trustees shall include the transfer of the balance term of the lease to the inheritors using the transfer instrument Form 14A. In a strata lease scheme, a lease is an interest without an undivided share. Lessees of more than one person or trustees will only hold the lease with their unit share in the interest. Interest must be held as a whole, jointly, and accordingly by all the trustees. Thus, registration of representatives under Section 346 will only occur if the registered lease has no surviving lessee or trustees. But if trustees hold a registered lease on strata title, therefore upon the death of any of the trustees, the registered lease shall be vested exclusively to the remaining trustees, as required by Section 345(1), National Land Code [Act 828]

Small Estates (Distribution) Act 1955

Section 3(2) of the Small Estates (Distribution) Act 1955 allows the administration of the deceased's estate under this act for a whole or partial immovable property of the deceased in value not exceeding two million ringgit Malaysia. Complying with this requirement, the parcel's value in a strata lease scheme belonging to the deceased, including all other assets, must not exceed two million ringgit in Malaysia. Another condition in this act is that the deceased is intestate, meaning passing away without leaving a will. The beneficiaries themselves were allowed to proceed with the application by filing a petition to the land administrator without hiring lawyers. Section 31(1), Small Estates (Distribution) Act 1955 does not allow advocates to represent any beneficiaries in the hearing before the land administrator.

The difference between the Small Estates (Distribution) Act 1955 and the Probate and Administration Act 1969 is that for the administration of an intestate's estate, the district land administrator has exclusive jurisdiction under section 4 of the Small Estate (Distribution) Act 1955. As for the Probate and Administration Act 1969, the jurisdiction falls under the court's power. Still, the registration of orders acquired through the Small Estates (Distribution) Act 1955 is similar to the requirement of Section 346, National Land Code [Act 828].

Town & Country Planning Act 1976

Town & Country Planning Act 1976 [Act 172] was introduced to control development activities by standardising the planning process in all states and enforcing strict monitoring by the local authority. Section 19, Town & Country Planning Act 1976, requires the developer to obtain the State Authority's planning permission before the strata building construction begins. Planning permission consists of comprehensive detail on the critical conditions of the strata buildings development. Planning permission is documented evidence that the local authority approves the development project. The planning permission does not differentiate between the development of a strata scheme or a lease scheme. All buildings, either a typical or a strata lease scheme, look the same and have similar development processes (Zainal et al., 2022). A strata lease scheme will only exist when the construction of the building is completed, and the lease instrument is registered onto all the strata titles.

Housing Development (Control & Licensing) Act and Regulation 1966

The Housing Development (Control & Licensing) Act 1966, also known as Act 118, was created for three primary purposes. Firstly, it aims to regulate the housing projects developed by developers. Secondly, it seeks to prevent abuse or misconduct within the housing industry. Lastly, it aims to protect house purchasers from potential losses or damages by implementing certain limitations (Salleh Buang, 2001). In conjunction with this act, the Housing Development (Control & Licensing) Regulation 1966 was introduced to regulate the licensing activities of developers and standardise the sale and purchase agreement between them and purchasers. Regulation 11(1) in Schedule H and Regulation 11(2) for Schedule G is a standardised sales and purchase agreement for housing in a subdivided building and commercial unit. Schedules H and G require the developer and land proprietor to transfer title ownership to the purchaser upon issuing strata title. For a strata lease scheme, a house purchaser must also sign a lease agreement alongside the sales and purchase agreement.

However, applying Schedule H or Schedule G in selling the buying strata lease scheme's unit may not be as direct as other regular strata schemes. A review by Abu Bakar et al. (2022) pointed out that the current Schedule H and Schedule G of the Housing Development (Control

& Licencing) Regulation 1966 cannot fulfil the need for a sale and purchase agreement for strata lease building development. Schedules H and G had no clause to allow the lease transfer to the purchaser. Abu Bakar et al. (2022) in their study suggested that an amendment to the Housing Development (Control & Licencing) Act 1966 [Act 118] be made to incorporate a new Schedule which specifically catering the buying and selling agreement of the strata lease scheme or private lease scheme instead of request by the developer for modification as accordance to Regulation 11(3) of the Housing Development (Control & Licencing) Regulation 1966 reads as follows:

Where the Controller is satisfied that owing to particular circumstances or hardship or necessity compliance with any of the provisions in the contract of sale is impracticable or unnecessary, he may, by a certificate in writing, waive or modify such provisions:

Provided that no such waiver or modification shall be approved if such application is made after the expiry of the time stipulated for the handing over of vacant possession under the contract of sale or after the validity of any extension of time, if any, granted by the Controller.

Is the Current Law Relevant?

To recap, this paper aims to review whether these laws are substantial enough to uphold the requirements for constructing and administrating strata lease scheme buildings. The two objectives of this study are to determine what laws apply to strata lease scheme development and, secondly, whether these laws are relevant to support all parties' needs in the current development. To achieve these objectives, the arisen question needed to be addressed. The question arises whether a new law specifically for the strata lease scheme concept and development is necessary. If a new law is not required, the next question to be considered is whether the current law needs to be amended or updated to suit the needs of strata lease scheme concepts and applications. The scholars' debates come to a reasoning on the inadequacy of the laws to implement a strata lease scheme concept that favours all parties. However, these studies review the relevance of the current Malaysian laws in applying the strata lease scheme concept.

Through case study methodology, the retrieved data presents the laws referred to by the process owners who were the respondents. A detailed explanation of the legislation provided by the respondents helped present the law of the strata lease scheme more precisely. While there is no specific law or a single law for strata lease scheme development, research suggests that nine laws are required to govern and oversee every process step in strata lease scheme development. The following laws are crucial to such development: National Land Code [Act 828], Strata Title Act 1985, Strata Management 2013, Trustees Act 1949, Federal Constitution, Probate and Administration Act 1959, Small Estates (Distributions) Act 1955, Town and Country Planning Act 1976, and Housing Development (Control & Licensing) Act 1966.

The research finds that no major adjustment is needed to the current legislation in Malaysia to suit the need for strata lease scheme development. These findings counter the statement made by some scholars for a need for a new law or a major amending in the National Land Code [Act 828], Strata Title Act 1985, and Strata Management Act 2013 for such development linked the strata lease scheme to be workable. The case studies of strata lease schemes established in current strata lease scheme projects in Malaysia have proved that it is possible to govern and

manage its development and other processes within the current laws. To delve into the strata lease scheme's laws, having a tabulated legislation framework as detailed as possible on which law provision directly caters to strata lease scheme development may help stakeholders better understand the governance of current legislation over the strata lease scheme before embarking on future needs for new legislation.

In this research, the researchers explored themes related to the laws of the strata lease scheme based on inputs from interviews and a review of these nine laws. The findings and discussions led to the creation of Figure 3, which illustrates the significant aspects of the topics or themes governing the development of the strata lease scheme within the provisions of these laws.

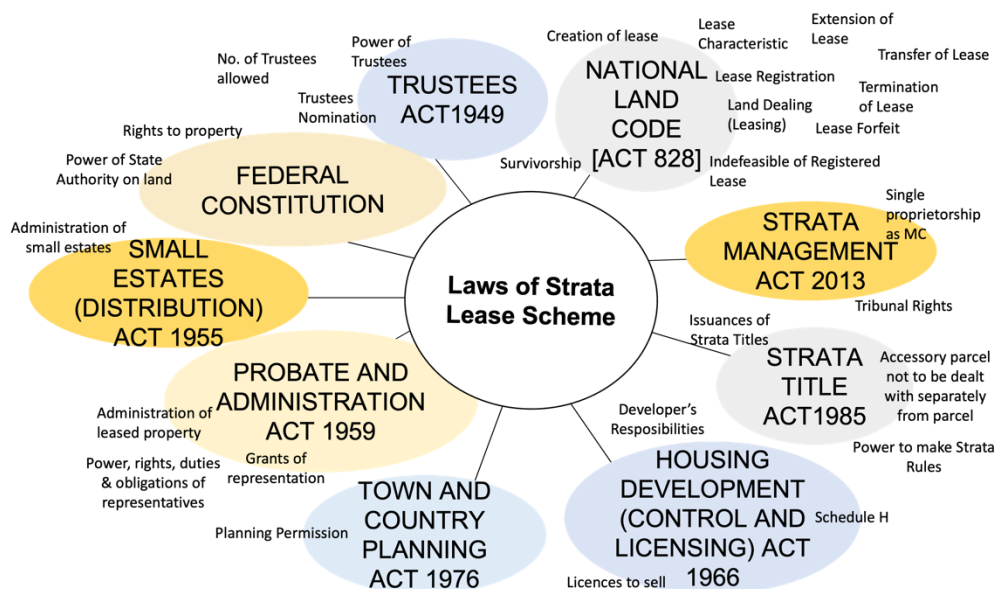


Figure 3: The Laws of Strata Lease Scheme

Source: Zainal et al. (2023b)

Conclusion

The research has successfully achieved its two objectives. Firstly, it determined the law of strata lease schemes by collecting inputs from the respondents and cross-referencing law reviews, confirming that the nine Malaysian laws are the legislations to be referred to in any strata lease scheme projects. The next objective was accomplished by discussing the respondent inputs from individuals directly involved in the current strata lease schemes in Penang and Johor. These schemes were developed and administrated based on the current law without any legislative amendments.

Moving forward, this study contributes new knowledge about understanding the laws governing strata lease schemes. Understanding strata lease schemes legislation allows for possible future development of leased properties that cater to niche needs. Leasing property can be an excellent solution to the homeownership problem in Malaysia. However, lawmakers should monitor issues arising from this latest trend of buying property through a lease to ensure that those who purchase through a lease are given the same rights under Malaysian laws and are held accountable for any defaults in performance, just like traditional parcel owners. To conclude, the nine Malaysian laws reviewed are relevant to governing the development of the

strata lease scheme. Constructing a new law may not be necessary as the demand for strata lease scheme projects is still limited. Nonetheless, updating the current law could assist involved parties in better managing the lease scheme.

Recommendation

Currently, the development of the strata lease scheme depends on the general laws, and there are no plans to amend these laws. For this reason, a detailed development framework of the strata lease scheme project should be established through all stakeholders' efforts. A well-designed development framework for strata lease schemes is foreseen to generate extra revenue for land authorities, streamline pre-development processes, expedite planning approvals for new developments, and enable authorities to enforce laws more effectively. By utilising a comprehensive development framework, landowners can expand their land development options while still retaining ownership rights, allowing them to generate additional revenue. The framework also facilitates active management of strata buildings while ensuring that all parties involved in agreements, such as landowners and lessees, are protected by the law. Developers can differentiate between regular strata scheme development and lease schemes and gain a thorough understanding of legal requirements, social obligations, and security demands, resulting in more effective agreements with landowners and strata unit purchasers. Familiarity with the critical processes and relevant laws related to the strata lease scheme is essential for all parties to execute better plans.

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References

- Abu Bakar, N., & Azmi, R. (2023). The Legality Of A Private Lease Scheme: Pull The Wool Over The Purchaser's Eyes? *Planning Malaysia Journal*, 21.
- Abu Bakar, N., Azmi, R., Azlinor Sufian, & Hartini Saripan. (2022). Legal Ramifications of a Private Lease Scheme Property Sale by Malaysian Developers. *Journal of ASIAN Behavioural Studies*, 7(21), 29–43.
- Abu Bakar, N., Azmi, R., Sufian, A., & Saripan, H. (2021). The Legal Implications of a Sale of Property by Malaysian Developers under the Private Lease Scheme: In Two Minds? *Environment-Behaviour Proceedings Journal*, 6(17), 183–187. <https://doi.org/10.21834/ebpj.v6i17.2867>
- Chang, K. L. (2020, December 6th). Private lease scheme: A risk for house buyers. *Focus Malaysia*. Retrieved from <https://focusmalaysia.my/private-lease-scheme-a-risk-for-house-buyers/>
- Dobinson, I., John, F., & Johns, F. (2017). Legal research as qualitative research. In M. McConville & W. H. Chui (Eds.), *Research Methods for Law* (pp. 18–47). Edinburgh University Press, UK
- Faizal, K. (2014). The Development of an Effective and Efficient Dispute Resolution Processes for Strata Scheme Disputes in Peninsular Malaysia (Issue March). The Queensland University of Technology.
- Federal Constitution (2019). International Law Book Services, Selangor Darul Ehsan.

- Halim, A. H., & Mohd Noor, N. A. (2013). Personal Representative Cum Trustee In Estate Administration: Conflict of Duties and Obligations. The 7th UUM International Legal Conference 2013, 1959, 551–558.
- Housing Development (Control And Licensing) Act 1966 [Act 118] (2021), International Law Book Services, Selangor Darul Ehsan.
- JKPTG. (2021). Strata title. Department of Director General of Lands & Mines, Ministry of Energy & Natural Resources. Retrieved from <https://www.jkptg.gov.my/en/soalan-lazim-3/45-faq/hakmilik-strata/1048-strata-title>
- Mohsin, A., Zainudin, A. Z., Zamri, N. I., & Maarooof, N. N. (2020). Perlaksanaan Skim Pajakan Persendirian Hartanah Strata: Kajian Kes Medini, Johor. In LAND (Vol. 4, Issue 1, pp. 95–118). , Jabatan Ketua Pengarah Tanah & Galian Persekutuan.
- National House Buyer Association (2021, February 7th). What homebuyers should know about Private Lease Schemes (PLS). IProperty. Retrieved from <https://www.iproperty.com.my/news/private-lease-schemes-homebuyers/>
- National Land Code of 1965 [Act 828] (2019), International Law Book Services, Selangor Darul Ehsan
- Probate And Administration Act 1959 [Act 97] & Regulations (2019), International Law Book Services, Selangor Darul Ehsan.
- Salleh Buang. (2001, November 6th). Housing Development Act: Who Does It Protect? Retrieved from https://www.hba.org.my/HBA/Speeches/hda_protect.htm
- Small Estates (Distribution) Act 1955 [Act 98] and Regulation & Order (2020), International Law Book Services, Selangor Darul Ehsan.
- Strata Management Act 2013 [Act 757] (2016), International Law Book Services, Selangor Darul Ehsan.
- Strata Title Act (1985). [Act 318] (2017), International Law Book Services, Selangor Darul Ehsan.
- Teoh, T.L (2003). The issues of strata title development in Malaysia and Australia: a comparison for future direction. Master's thesis, Universiti Teknologi Malaysia, Faculty of Geoinformation Science And Engineering.
- Town And Country Planning Act 1976 [Act 172] & Order (2020), International Law Book Services, Selangor Darul Ehsan.
- Trustee Act 1949 [Act 208]; Trustees (Incorporation) Act 1952 [Act] & Public Trust Corporation Act 1965 [Act 532] (2018), International Law Book Services, Selangor Darul Ehsan.
- Zainal, N. H., Samsudin, S., Md Azmi, F. A., & Amin, S. (2022a). Practicalities of Strata Lease Schemes in Malaysia. Environment-Behaviour Proceedings Journal, 7(19), 233–237.
- Zainal, N. H., Samsudin, S., Azmi, F. A. M., & Amin, S. (2022b). A Case Study of Strata Lease Schemes in Malaysia: Features and Uniqueness. Environment-Behaviour Proceedings Journal, 7(22), 95-102.
- Zainal, N. H., Samsudin, S., & Md. Azmi, F. A. (2023a). Distinctness of strata lease scheme in Malaysia's stratified building development: A review. International Journal of Law, Government and Communication, 8(32), 138–149.
- Zainal, N. H., Samsudin, S., & Azmi, F. A. M. (2023b). Strata Lease Schemes For Township Development: A Case Study of Bandar Baru Ayer Itam in Penang. IOP Conference Series. Earth and Environmental Science, 1274(1), 012037.
- Zainudin, A. Z., Abdullah, N., Yunus, N. M., Samsudin, S., Mustaffa, N. E., Radiaton, S., Zakaria, A., Afiqah, F., Azmi, M., Mohsin, A., & Ismail, D. N. (2022). Knowledge And Views Of Buyers And Property Management Agent On The Management Of Strata

Private Lease Scheme. In International Journal of Business and Economy (IJBEC) (Vol. 4, Issue 2).

Zamri, N. I. (2019). Skim Pajakan Persendirian Bagi Bangunan Strata Di Medini, Johor Bahru (Vol. 1). Master's thesis, Universiti Teknologi Malaysia, Faculty of Built Environment And Surveying