LEGAL FRAMEWORK FOR SOIL EROSION MANAGEMENT IN HOUSING DEVELOPMENT: REFORMING MALAYSIA'S PLANNING LAW

Nuarrual Hilal Md Dahlan
School of Law
Universiti Utara Malaysia
Email: nuarrualhilal@gmail.com; nuarrualhilal@uum.edu.my

ABSTRACT

Many landslides occurring in housing areas in Malaysia have intrigued and shocked the Malaysian public. These disasters have caused massive damage to property and losses of life. It is a trite fact that, in Malaysia, soil problems have negatively impacted the residents' lives and property. The most significant soil problem disaster in Malaysia was the collapse of Highland Towers in 1993. This disaster caused pecuniary and non-pecuniary losses to the residents of the buildings. The question is, what can be learned so far from these land-related catastrophes? The main objective of this writing is to analyse the legal provisions in the planning law that have bearings on soil problems and soil erosions in housing areas. This writing aims to explore the weaknesses in the planning law and its implementation to provide preventive and curative legal measures against soil problems, soil erosions, and their consequences in housing development areas. This writing proposes a new perspective on planning legal ideas governing soil fitness in housing development areas. Qualitative social and legal research methodologies were used to study the facts and issues. The subjects of this research involve many housing development areas that face soil problems in Malaysia. It follows that the outcomes of this writing and the proposed legal reforms relating to planning law in housing areas can be improved to face the soil problems and protect the rights of the house residents.

Keywords: Soil Erosion; Soil Settlement; Housing Areas; Planning Law; Issues

INTRODUCTION

Since Malaysia's Independence in 1957, the Malaysian Government has embarked on developing the nation by providing housing to the citizens. Various means and efforts have been made to actualise this noble agenda. This can be seen in various Malaysian Plans since independence. The objective of the Malaysian Government is to provide sufficient housing to the citizens that is affordable, quality, and sufficient (Prime Minister's Office, 2021). The blueprint of housing policy in Malaysia is evident in the Housing Policy 2018-2025. The policy states, "The goal of the DRN (2018- 2025) is to guide the country's housing sector by emphasising the systematic, quality, inclusive, efficient and affordable housing planning, development and management of the people to generate sustainable and empowered housings." (National Housing Department, 2018). One of the challenges in the Malaysian housing industry is soil erosion, which has caused damage and losses to the victim residents in the housing areas. The problem can be due to flood, unsuitable geographical location, inadequate planning, insufficient construction works, and the act of God. This includes the failure of the State Authority ('SA') to alienate and provide suitable lands for housing areas, the failure of the Local Authority ('LA') and Local Planning Authority ('LPA') to identify the suitability of geographical locations fit for housing development and inadequate decision-making process for land development approval, inadequate coordination between the local authority, planning authority and the technical agencies, insufficient risk management system and insufficient preventive and curative measures to deal with soil erosion and its catastrophes at housing areas. (Md Dahlan, 2024a, 2024b).

Many literatures have discussed the issue of soil erosion in Malaysia. Nonetheless, it has yet to study and discuss the soil erosions and problems at housing areas from the planning law perspective in Malaysia.

Among the authors who discussed this matter are Roslee and Shahril (2019) on 'Soil Erosion Analysis using RUSLE Model at the Minitod Area, Penampang, Sabah, Malaysia', Pradhan, Chaudhari, Adinarayana & Buchroithner (2012) on 'Soil erosion assessment and its correlation with landslide events using remote sensing data and GIS: a case study at Penang Island, Malaysia', Roslee, et al., (2017) on 'Integration of GIS in Estimation of Soil Erosion Rate at Kota Kinabalu Area, Sabah, Malaysia', Md Dahlan (2022) on 'Flood Disasters At Housing Areas In Malaysia: A Planning Law Perspective' and Najib (2020) on 'Modeling Soil Erosion and Landscape Metric Analysis of River Catchments in Pulau Pinang, Malaysia.'(Md Dahlan, 2022; Pradhan et al., 2012; Roslee et al., 2017; Roslee & Sharir, 2019; Sumayyah Aimi Mohd Najib, 2020).

Rosle and Sharil (2019) stated that one method for detecting possible soil erosion is to apply a soil assessment over certain projected areas. This soil assessment is known as the Revised Universal Soil Loss Equation (RUSLE). This assessment is based on a Geographical Information System (GIS) in setting its parameters. The researchers believe that this assessment method can provide information on the degree or severity of certain geographical locations. Thus, possible soil erosion problems can be detected at the outset of any development work. The data generated from RUSLE will provide ideas to developers on how to cater and address the identified issues. (Roslee & Sharir, 2019).

The above finding by Rosle and Sharil (2019) is supported by other researchers, namely Pradhan, Chaudhari, Adinarayana and Buchroithner (2012). These researchers used the universal soil loss equation (USLE) method to assess and analyse soil erosion in prone areas. Through land location and soil analysis, certain results can be found and used to facilitate the authority and land development industry players in managing land development to avoid any catastrophes emanating from soil erosions. This finding by Pradhan, Chaudhari, Adinarayana & and Buchroithner is also supported by Roslee, Bidin, Musta and Tahir and Mohd Najib. Najib used the Universal Soil Loss Equation model and sampling data to analyse soil erosions. (Pradhan et al., 2012; Roslee et al., 2017; Sumayyah et al., 2020).

Finally, Md Dahlan (2022) studied flood disasters from the planning law perspective. He opined that the planning law has lacunae and weaknesses that have contributed to flood disasters in housing areas in Malaysia. (Md Dahlan, 2022).

On the other hand, the instant writing will discuss soil erosion in housing areas from the perspective of planning law in Malaysia. It will serve as an exploratory and enriching writing that explores soil erosion, soil problems, and soil settlement at housing development projects through a planning law perspective that has not been studied before.

RESEARCH METHODOLOGY

The research methodology that the author used is a combination of qualitative and legal research methodology. Legal research aims to explain, find, and analyse the law and the events related to the law. The legal research process includes gathering laws, analysing the law, analysing and interpreting certain events, phenomenon issues, ambiguities, and legal weaknesses, identifying the relevant laws to settle and solve the problems, and disseminating the legal findings to others for information, advice, and judgment. The primary sources are the statutory provisions and case law relating to planning law, particularly planning law as enshrined in the Town and Country Planning Act 1976 (Act 172)('TCPA')(Iedunote, 2023; Yaqin, 2007).

Qualitative research methodology is used as the author wishes to conduct in-depth research on soil erosion issues in housing areas. The reason why qualitative is chosen rather than quantitative research methodology is that this type of research (qualitative) and selection will allow more access to details due to convenience and time factors, geographic proximity, getting more intensive analysis and in-depth study about the facts, problems, issues, legal phenomena and legal analysis in term of the procurement process of the chosen project. The primary data for qualitative research is interviews with relevant government departments and industry players in land use planning and development. Further secondary data sources were used to support, strengthen and corroborate the primary data, analyses and findings of the research (Silverman, 2017; Yin, 2014).

RESEARCH OBJECTIVES

The objectives of this writing are to examine the planning law governing soil fitness in housing areas in Malaysia, analyse planning legal issues on the same subject matter, and propose improvements in the planning law in the face of soil problems and soil erosion.

RESEARCH QUESTIONS

The research questions which this instant writing aims to answer are as follows:

1) What are the planning laws and regulations governing soil fitness in housing areas in Malaysia;

2) Are the planning laws and regulations adequate to meet soil erosion issues in housing areas that can protect the rights and interests of the house residents?

3) If the planning laws are not adequate, why?

4) How can the planning laws in Malaysia improve to provide sufficient protection against soil erosion in housing areas?

5) What are new legal ideas to improve the planning laws that can provide adequate protection to house residents?

SOIL EROSIONS AT HOUSING AREAS THROUGH PLANNING LAW PERSPECTIVE – A DISCUSSION

Planning law governs land development and construction of buildings according to certain rules and regulations. This law aims to achieve sustainable development that can ensure the safety, security and health of the inhabitants of the planet. In Malaysia, Planning Law is enshrined under the Town and Country Planning Act 1976 (Act 172) ('TCPA'), and for certain states, their respective planning legal provisions, for example, for Federal Territories, the Federal Territory (Planning) Act 1982 (Act 267), Town and Country Ordinance (Sabah Cap 141) for Sabah and Sarawak Land Code (Cap 81) for Sarawak. These planning statutes provide conditions for land development that applicant developers must comply with before proceeding with the intended development. The statutes also provide the best practices that must be implemented in land development.

Various planning law issues relate to soil erosions in housing areas. The following are the planning law issues that have been identified will be discussed in this paper:

a) Inadequate development plan, insufficient advice and comments from technical agencies and no soil investigation made.

b) Inadequate big data and data analytics on every district in Malaysia regarding soil fitness and treatment.

c) Unfair conditions imposed by the Planning Authority ('PA') for the issuance of planning permission and certificate of fitness for occupation ('CF') or certificate of completion and compliance ('CCC').

d) The State Authority ('SA') and Land Authority ('LA') are superior to the PA and the technical agencies.

Inadequate Development Plan, Insufficient Advice and Comments from Technical Agencies and No Soil Investigation Made

According to Azmin Zainul Abidin, a Kota Setar Land Office officer, soil problems arise due to a lack of soil investigation ('SI'). Normally, SI should be done during the Planning Permission stage, not during the alienation stage (land authority stage). The developer should carry out the Soil Investigation ('SI') himself, subject to the views and comments of the technical agencies, to ascertain the fitness and suitability of land for the intended housing development. However, the requirement for carrying out SI is not mandatory. Thus, Azmin Zainul Abidin suggested that SI should be mandatory for all land developments before their commencement (Azmin Zainul Abidin, personal communication, August 3, 2017).

Two further issues that may lead to problematic housing development projects due to soil problems are the absence or inadequate views and comments made by the technical agencies, particularly the Department of Mineral and Geoscience ('JMGS') and the inadequate information contained in the development plans. As the data and information from these sources are inadequate, not updated, incomprehensive, and of poor quality, the decision-making outcome in the planning process may also not address the potential danger to the housing development project emanating from soil problems and its unfitness. This problem can occur at the One Stop Centre ('OSC'), during planning permission and, approved plans, and Certificate of Completion and Compliance ('CCC') stages. However, the issue of incomplete comments by the technical agencies is negated by Su Faizah Sukor and Bakhtiar Othman from the Slope Department, Department of Public Works ('JKR'), Kuala Lumpur, where they said that on part of JKR, JKR has done their level best to provide adequate views relevant for development involving slope areas. Nevertheless, JKR also considers the constraints and capabilities of the developers and consultants for carrying out the land development and its costs (Wan Harun, personal communication, January 10, 2021).

To Su Faizah Sukor & Bakhtiar Othman, on part of the JKR, failure of soil on slope is due to weaknesses of the development plan on slope areas, slope design failure, development works that do not comply with specifications and lack of or inadequate slope maintenance (Su Faizah Sukor, Bakhtiar Othman, Personal Communication, February 8, 2021).

Soil treatment is required to ensure the soil is fit for housing development. This includes slope maintenance, a proper and adequate drainage system, cleaning drains from any clogging materials, replacing unsuitable soil with suitable and fit soil, suitable soil piling, planting healthy, dense grasses, and retaining walls **(**ir Abu Bakar Hashim, Personal Communication, April 17, 2019).

In addition, according to Wan Salmi Wan Harun from the Department of Minerals and Geoscience Alor Setar ('JMGS'), the JMGS comments are based on outdated guidelines that need to be revised to deal with the climate changes and current issues in housing. JMGS also lacks comprehensive big data on location suitability for housing development projects in Malaysia. This big data includes information on rock, sediment, soil fitness, soil suitability, soil issues, soil strengths, soil weaknesses, and other geologic specimens useful for sustainable housing development. The big data should contain information on the risk locations and factors that can cause development risks. This may also involve a Geographical Information System ('GIS'). However, ensuring that big data is fully meaningful and functional requires the support of a modern apparatus system and a suitable data storage platform. One of the platforms that JMGS is developing is NATSIS. This data can reveal risk areas, landslides, land erosion, slope, limestone, peat, and sensitive geological areas (National Geospatial, Terrain and Slope Information System). NATSIS involves two key elements:

a) Geospatial information systems application development terrain and slopes country (National Geospatial Terrain and Slope Information System – NaTSIS)

b) Geospatial information infrastructure development centre terrain and slope (PMGTC), including the acquisition of hardware and software ICT projects, are under project components Hazard, Risk and Slope Map (PBRC) being a part of the requirements under the National Slope Master Plan (20092023)(Jabatan Mineral dan Geosains Malaysia, 2016).

This data is incorporated into the National Slope Master Plan 2009-2023 (PICN). Nonetheless, this special data is only available for certain locations such as Gombak, Selayang, Rawang, Batang Kali, Cheras Selatan, Kajang, Bangi, Ipoh, Cameron Highlands, Kundasang and Kota Kinabalu, not for all districts in Malaysia. This project is called PBRC (Peta Bahaya, Risiko dan Cerun - Hazard, Risk and Slope Map). Currently, JMGS only have data on slope hazard and risk mapping. JMGS also have a geology map containing data on rock material types. Through this geology map, JMGS can know the sensitive areas, limestone areas, geological process, areas' height, and geological situations of certain areas. This geology map is the primary reference for JMGS in providing views and comments for land development as required by the authorities. The data in the PBRC are always updated. In short, the geological big data available as references are NaTSIS, PBRC and the National Slope Master Plan (Pelan Induk Cerun Negara). However, the guidelines on PBRC for public and industry information have yet to be made available (Wan Salmi Wan Harun, personal communication, January 10, 2021).

In another development, JMGS is monitoring a project known as the 'Northeast Monsoon Project'. The monsoon disasters have caused many geological hazards and soil problems. JMGS is monitoring critical slopes and ensuring adequate maintenance works are periodically done. This project commenced in 2020 (Norazizi Adinan, personal communication, January 31, 2021).

In some states, there is no gazetted local plan or structure plan for the districts that can envisage any possible soil problem and the suitability of the location for housing development. In this situation, the PA had to conduct *ad hoc* investigations about the suitability of the purported project and the land, including consulting several technical agencies. (Md Dahlan, 2009).

Further, in the Structure Plans, the categorisations of the land use for specific developments, including land areas and zones purportedly suitable for housing development projects, were made after the affected lands had been subjected to specific suitability analyses and after considering issues and factors such as the saturated areas, committed developments and the need to preserve environmentally sensitive areas such as water catchment areas, wildlife forest reserves, low-lying watery grounds, high-lands exceeding 100 meters from the sea level and water areas. These measures and analyses were undertaken to optimise the land use according to suitability and be consistent with the sustainable development objectives and rules.(Jabatan Perancang Bandar dan Desa, 2007; Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia, 1998).

Despite the above measures and analyses conducted over the land use, the author opines that, the suitability and the categorisations of the land use, it is opined that the Local Plan and the Structure Plan still lack a requirement which imposes on the applicant developers to carry out necessary and thorough soil investigation ('SI') against the affected land and its soils, to ensure that the land and its soils are practically suitable for carrying out housing development projects. This is because, even though the local plan and structure plan have been prepared after certain studies, analyses and fieldwork made based on primary and secondary data over the suitability of the lands for certain uses, certain specific SIs, it is opined, are still required to ensure that the purported location and its soils are indeed and practically suitable for land development projects. (Lukhman Hakim Ahmad, personal communication, December 9, 2020).

The above contention is made because the analyses, studies, and fieldwork might have been outdated or not exhaustively made. Thus, they cannot identify specific soil problems, such as slime soils beneath certain areas within the jurisdiction of the local plan for necessary actions (Mohd Izwan Abdul Hamid**,** personal communication, February 6, 2018).

Thus, the suggestion on the obligation of the applicant developers to undertake specific SI can only be actualised if this suggestion has been duly given sufficient consideration and incorporated into the draft of the development plans or the gazette development plans or the State Planning Committee so directs or that the development proposal report made so proposes (section 21a of the TCPA), or there is an objection by the neighbouring land owner to the project site, respectively pursuant to section 22(2)(a)(the provisions of the development plan, if any), or (b)(the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those provisions), or (aa)(the direction given by the Committee, if any) or (ba)(the provisions of the Solid Waste and Public Cleansing Management Act 2007 [Act 672] or (bb)(the development proposal report) or (bc)(the provisions of the Sewerage Services Act 1993 [Act 508]) or (c)(objection by the neighbouring land owner against the purported application for planning permission under section 21(6) of the TCPA).

Further, the information in the development plans needs to be periodically updated, corrected, or revised to meet contemporary development challenges. This issue is partly due to the absence of availability of big data on developmental elements such as the nature of soil, geographical site location and their fitness and sustainability; particularly, it can be provided by the LPA, Department of Environment (‘JAS’), Department of Irrigation and Drainage (‘JPS’) and JMGS. Further, in preparing the development plans, the LPA it is evident does not refer to some relevant technical agencies for views, for instance, JAS; the above non-compliance is partly because the states had yet, as of the date of the applications for planning permissions by the applicant developer, adopted the TCPA in *toto.* (Abd Talip Abd Rahman, personal communication, January 4, 2018; *Chong Co Sdn. Bhd v. Majlis Perbandaran Pulau Pinang* [2000] 5 MLJ 132 and *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1; Mohd Izham bin Abdul Hamid, personal communication, February 6, 2018; (Awang, Adibah, 2009).

Alternatively, it is submitted that during the approval of the planning permission for the project, there were no emphases, guidelines, or considerations of factors leading to soil problems in housing projects. Likewise, no countermeasures were provided to address the problem. Thus, before the TCPA and its Rules enforcement, planning practices were made ad hoc, including by referring to certain technical agencies.

In another situation, the development plans are not gazetted. Thus, the LPA and the State Planning Committee (‘SPC') may practise *ad hoc* planning, not restricted to the ungazetted development of local plans. In other words, this gives flexibility and convenience to the SPC in governing planning control. In this situation, the LPA and SPC may refer to the development master plan to support their decision-making process involving planning application and planning control. This happens in Penang. (Abd Talip Abd Rahman, personal communication, January 4, 2018).

In another respect, if the housing development project does not fall under ‘prescribed activities’ as defined by the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, there is no obligation on developers to provide Environmental Impact Assessment Reports (‘EIA’), particularly in respect of the soil structures. It is noteworthy, and in addition, not only that EIA may be imposed if the project falls under 'prescribed activities', but the PA also may impose a Social Impact Assessment (‘SIA’) of the purported housing project if warranted. The SIA is required for the LPA to assess the effects and impacts of such a development on the surrounding residents. (Mohd Izham Abdul Hamid, personal communication, February 6, 2018).

Inadequate big data and data analytics on each district in Malaysia as regards soil fitness and treatment

It is submitted that apart from JMGS, as mentioned above, other relevant technical agencies such as JPS, JKR and JAS should also provide their respective big data relating to their expertise and job scope in every district in Malaysia insofar as prescribed by government policies and written laws. For example, JPS should provide updated and contemporary big data information for each district in Malaysia relating to River Basin Management and Coastal Zone, Water Resources Management and Hydrology, Special Projects, Flood Management, erosion and sediment control and Eco-friendly Drainage. The data should provide the nature, features, issues, problems, and measures to deal with the challenges in these respective matters. The data accumulated will help the PA to formulate comprehensive development plans and provide inclusive and practical conditions for issuance of Planning Permission for housing development that can prevent soil problems in housing projects. (Kementerian Perumahan dan Kerajaan Tempatan, 2019; Ministry of Environment and Water, 2021; Ministry of Natural Resources and Environment, 2010).

Similarly, JKR should provide updated and contemporary big data information on their job scope and jurisdiction regarding roads, buildings, infrastructure, highways, and hill slopes for every district in Malaysia. They also need to provide data on land geology relevant to their jurisdiction and power. (Jabatan Kerjaraya Malaysia, 2009; Kementerian Kerja Raya, 2016; Kementerian Perumahan dan Kerajaan Tempatan, 2019); (Su Faizah Sukor & Bakhtiar Affandi Othman, Personal Communication, February 8, 2021).

Likewise, the JAS should provide updated and contemporary big data information, for example, on pollution on soil, water, environment, and atmosphere; noise; discharge of wastes; and other responsibilities as prescribed under the Environmental. Quality Act 1974 (Act 127)(Kementerian Alam Sekitar dan Air, 2021); (Norazizi Adinan, Personal Communication, January 31, 2021).

It is further evident that no statutory requirement is imposed on the LA, LPA, and the technical agencies to provide updated comprehensive big data as a preventive way to avoid any occurrences of soil problems in the future. The only method is *ad hoc* planning, i.e., if certain areas are affected by soil problems, only then the LA, LPA and the technical agencies will make the planning conditions more stringent. (Ahmad Sujairi Md Hassan & Ramziah Abd. Rahman, Personal Communication, February 15, 2021).

Even the Geological Survey Act 1974 (Act 129), pursuant to Section 6 of Act 129, reads:

"**Whenever it appears to the Minister** that a geological survey should be made of any area he may, **with the concurrence of the SA**, by notification in the Gazette, designate the area to be surveyed (hereinafter referred to as "the designated area") by the Director-General." (emphasis added).

While section 2 of the Geologist Act 2008 (Act 689) defines 'geological services' as follows:

"The provision of geological advice and services pertaining to all or any of the following: (a) feasibility studies; (b) planning; (c) geological surveying; (d) implementation, commissioning, operation, maintenance and management of geological survey works or projects; and (e) any other services approved by the Board."

It is submitted that only if it appears to the Minister responsible for JMGS to request a geological survey be conducted for a particular area subject to the concurrence of the SA that the JMGS shall conduct a particular geological survey, including it is submitted, over the soil problem affected areas. If the Minister does not become aware of any possible problem with any soil location, no geological survey will be conducted by the JMGS. This shows that the survey will only be conducted on an *ad hoc* basis, not based on preventive. In another respect, the Minister can only proceed with the intended survey if the SA concur with the proposed survey.

Similarly, if the Minister disagrees with the request of the SA to conduct a survey, the SA has limited power and authority to force the Minister and the JMGS to conduct the survey. Meanwhile, with respect to the duty and responsibility of the LA to carry out maintenance work over relevant locations to prevent occurrences of soil problems, it is doubtful that the LA has the means and capability. (Ahmad Sujairi Md Hassan & Ramziah Abd. Rahman, Personal Communication, February 15, 2021).

Unfair conditions imposed by the PA for the issuance of Planning Permission and CF or CCC

It is evident that some of the local and planning authorities' practices responsible for issuing the planning permission may have caused unreasonable difficulties for developers. For example, the authorities may impose certain unfair conditions at the very last minute, nearing the completion of the project or in the middle of the development, as a condition precedent for the issuance of CF or CCC. The relevant technical agencies that are relevant for planning permission are JAS, JMGS, Tenaga Nasional Berhad ('TNB'), LA (engineering department), water authority, PLANMalaysia, JKR, Solid Waste Corporation (SWCorp), Malaysian Highway Board (LLM) and Malaysian Communication and Multimedia Commission ('SKMM'). These technical agencies will refer to their respective governing statutes and guidelines, for example, the Town and Country Planning Act 1976 (Act 172) ('TCPA'), Street, Drainage and Building Act 1974 (Act 133) ('SDBA'), Uniform Building By-Law 1984, Environmental Quality Act 1974 (Act 127) ('UBBL'), Geological Survey Act 1974 (Act 129), Electrical Supply Act 1990 (447), "Environmental Essentials for Siting of Industries in Malaysia (EESIM)", "Guidelines For Siting And Zoning of Industry And Residential Areas (SZIRA)", "Guidelines for Comments of Proposed Development Report (LCP)", "Guideline for Slope Design (JKR)", "Garis Panduan Perancangan, Pemuliharaan dan Pembangunan Kawasan Sensitif Alam Sekitar (KSAS)(2017)", "Guideline on Slope Maintenance for Public" and "Revised List of Earthwork Plan" and "Guideline for Erosion and Sediment Control". Thus, the technical agencies will require the developers to comply with their respective guidelines and statutes in order for them to support the proposed development (Kementerian Perumahan dan Kerajaan Tempatan, 2019); (Ahmad Sujairi Md Hassan & Ramziah Abd. Rahman, Personal Communication, February 15, 2021).

In contrast, these conditions might have yet to be stipulated earlier for immediate action and due notice of the developers. Taman Padang Tembak, Lot No. 688, TS 2, Mukim 16, Northeast District (NED), Pulau Pinang, is an example where the LPA had imposed certain unwarranted conditions. This happened because the LPA had amended the approval of certain plans made earlier, right in the course of construction of the housing units and new conditions had to be complied with by the developer, or otherwise CF would not be granted. (Md Dahlan, 2009); (Kementerian Perumahan dan Kerajaan Tempatan File Number: MHLG/08/824/2605, n.d.)

This would undoubtedly cause many difficulties, waste time, and affect the monetary capability of the developers. In some situations, problems may also arise because of the bureaucratic system culture among the technical agencies and LPA. This may also lead to corrupt practices. This similar catastrophe also appears in case law (*Tang Kam Thai and 133 Others v Langkah Cergas Sdn Bhd and Others* [2005] 1 MLJU 24; [2005] 7 MLJ 605 (High Court ('HC') of Malaya at Kuala Lumpur). In this case, the purported completion of the housing development and the delivery of the vacant possession for the units were delayed. As a result, the purchasers claimed liquidated late delivery damages. One of the reasons causing the delay was the new demands imposed by the PA before CF could be released (Mohd Izham bin Abdul Hamid, personal communication, February 6, 2018).

A similar problem also occurred in *Tropiland Sdn. Bhd v Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (HC of Malaya at Penang). In this case, the application for CF by the plaintiffs was rejected by the defendants. The reasons given by the defendant were the non-compliance by the plaintiffs with certain prerequisite conditions, *viz*, a) the completion of the remaining 20% of reconstruction and upgrading of the monsoon drain on state land notwithstanding the presence of unauthorised or illegal occupiers and b) the construction of a concrete perimeter drain along the eastern and southern boundary of the land under development, which did not appear in the amended layout plan for the purpose of the planning permission.

The plaintiffs contended that there was no justification for the defendants to require the plaintiffs to complete reconstruction and upgrade the monsoon drain as squatters occupied that portion of land. The defendants (MPSP) were responsible for making that portion of land vacant and available to enable the plaintiffs to complete the balance of 20% of construction works on the monsoon drain. Further, the concrete perimeter drain was not a condition stipulated in the approved layout plan of the planning permission, as the only drain required by the approved layout plan was the building drain running along the building proper. Thus, the act of the defendants (MPSP) in varying the conditions in the planning permission granted earlier at the last minute for the issuance of CF was unwarranted and unreasonable. However, on appeal of the defendants (MPSP), the Court of Appeal ('CoA') reversed the decision of the HC.

Likewise, in *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd* [1996] 3 MLJ 94; [1996] 3 CLJ 837 (CoA at Kuala Lumpur).

According to Mohd Izham Abdul Hamid, a Planning Officer at the Development Planning Department, Majlis Bandaraya Alor Setar (MBAS), the changes to the Planning permission's conditions are inevitable to comply with the latest requirements of the technical agencies in accordance with the current changing needs and issues of the public, for example, flood disasters, soil problems, soil settlement, landslides, welfare, safety and security of the public etc. Mohd Izham Abdul Hamid also supported this reason (for changing the conditions subject to the pressing needs, issues and new challenges). (Mohd Izham Abdul Hamid, personal communication, February 6, 2018), (Md Dahlan, 2024c)).

In short, Mohd Izham bin Abdul Hamid explained that the new conditions might be imposed by the technical agencies such as the water authority, electric authority, and agriculture authority because new circumstances have rendered new conditions to be imposed on the Planning Permission. The new conditions also include the duty to provide a Demographic Study Report, Economic Study Report, Traffic Audit report, Traffic Impact Assessment, Road Safety Audit, Social Impact Study Report and Environmental Impact Assessment report (EIA) (Mohd Izham Abdul Hamid personal communication, February 6, 2018); (Kementerian Perumahan dan Kerajaan Tempatan, 2019).

The above reports will be studied by the technical agencies and PA, who may comment on and request amendments to the proposed projects according to the requirements of their respective guidelines. In addition, the applicant developer must also comply with requirements under the Local Plan and Structure Plan (Development Plans). Only when all the conditions and requirements imposed by the technical agencies and the PA have been complied with will the Planning Permission be issued and granted.

According to Ruhaina Ibrahim, a Town Planner at BDB Land Sdn Bhd, developers must carry out several feasibility and estimate studies and several contingency budget provisions to lessen the impact of this problem and accommodate the changing requirements. This also requires prudent financial management and planning of the developers (Ruhaina Ibrahim, personal communication, March 8, 2018).

To Ruhaina Ibrahim, one of the issues is the SA's requirement that the developer must provide low-cost houses as a condition precedent to the issuance of the Planning Permission. The provision of low-cost houses does not bring any profit to the developers. It is just a social obligation to facilitate the low-income group to have their own houses. (Ruhaina Ibrahim, personal communication, March 8, 2018).

Normally, to achieve the obligation of low-cost houses, developers will develop low-cost high-rise buildings as this will reduce the wastage of land area for commercial development. However, the developers could not develop high-rise buildings that are more than five-storey as the Local Plan (Rancangan Tempatan Daerah) stipulates those high-rise buildings should not be more than five-storey. Thus, this may affect the feasibility of the development project of the developers. If the developers wish to provide high-rise buildings with more than five storeys, they must apply for variation and zoning change in the Development Plans. This will involve additional time and cost (Ruhaina Ibrahim, personal communication, March 8, 2018).

In *Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors* [1999] MLJU 91 (HC of Malaya at Penang), the applicant developer intended to erect five blocks of 19-storey (720 units) of medium-cost flats on Parcel 1A and 24 units of two-storey shophouses and one block of 16-storey (344 units) low-cost flats on Parcel A2 on part of Lot 2366, Mukim 12, Southwest District, Pulau Pinang. The applicant developer applied for planning permission from the respondent. The respondent, the PA, processed the application of the proposed project with a comment that 'the existing bridge crossing Jalan Relau on the northern part of the land should be widened according to the JKR's conditions'. The plaintiff applicant did not satisfy this condition and appealed to the second defendant – the JKR.

The defendants dismissed the appeal. Later, the plaintiff applicant amended the application for planning permission as required, and the same condition was endorsed on the layout plan. The first respondent (MPPP) approved this second application but subjected it to some conditions, *inter alia*, 'should comply with the requirements of the water authority, TNB, JKR, JPS, Fire and Rescue Department (Jabatan Bomba dan Penyelamat), Syarikat Telekom Malaysia and MPPP (Penang Municipal Council) before the building plan could be approved. The planning permission was renewed four times. Later, the plaintiff applicant appealed to the Appeal Board pursuant to section 23 of the Town and Country Planning Act 1976 (Act 172) on the ground that the condition to widen the bridge as required in the planning permission was unfair and had caused grievances to them.

However, their appeal was dismissed as the appeal was filed out of time, and there was no leave to appeal beyond the required time. After six months of this decision, the plaintiff applicant filed an originating summons in the HC, applying *inter alia*, the condition prescribed by the Defendants is ultra vires Act 172 (TCPA). The HC of Malaya at Penang dismissed the summons on the ground that there was no leave to appeal to the HC within six weeks from the date of the decision of the Appeal Board; the summons was filed beyond the limitation period of thirty-six months as required under the Public Authorities Protection Act 1948 (Act 198), the plaintiff applicant had breached the doctrine of laches, and that summons was estopped due to the doctrine of *res judicata*.

In *Tropiland Sdn. Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (HC of Malaya in Penang), and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd.* [1996] 3 MLJ, 94; [1996] 3 CLJ 837 (CoA at Kuala Lumpur), the application of the applicant developer for the CF was rejected by the LA as the applicant developer failed, *inter alia*, to construct the perimeter

drain along the eastern and southern boundary of the land on which the completed building was erected, pursuant to the earthworks plan (for the purpose of carrying the earthworks on the project site required by section 70A(1)(2)(3) SDBA. However, there was no such requirement (perimeter drain) in the amended layout plan (for the purpose of planning permission, which TCPA governs). However, according to the CoA on appeal by MPSP had discretionary power to issue CF pursuant to by-law 25(1) of the UBBL. In the issuance of CF, MPSP had the right to impose conditions pursuant to the TCPA and the SDBA.

Thus, in granting CF, the applicant developer has to comply with the requirements imposed by these two legislations (TCPA and SDBA). In other words, the requirement for construction of the perimeter drains, although not provided in the amended layout plan (for the purpose of planning permission), would still be required for the purpose of the grant of CF, as the earthworks plan (to carry out earthworks) had so provided.

Further, sometimes, housing problems may occur due to the non-compliance by the developers themselves with the conditions and requirements imposed in the planning permission, resulting in the failure to obtain the necessary CF or CCC before the project can be considered complete and handed over to the respective purchasers. This problem can be seen in Taman Temiang Jaya, Seremban, developed by AMA Construction Sdn. Bhd (The planning permission was to develop double-storey shop houses). However, the developer did not comply with the conditions attached to the permission but instead changed and erected double-storey terraced houses without the permission from Majlis Perbandaran Seremban (Kementerian Perumahan dan Kerajaan Tempatan File Number: MHLG/08/824/2732-01, n.d.).

Similar is the case in *Syarikat Chang Cheng (M) Sdn. Bhd v. Pembangunan Orkid Desa Sdn. Bhd.* [1996] 1 MLJ 799 (HC of Malaya at Kuala Lumpur), where the LA ordered the developer to stop the development work due to non-compliance with the conditions imposed by the authority.

On other occasions, problematic housing projects might have been caused by illegal squatters who refused to leave the project sites. The refusal of the illegal squatters is usually due to their dissatisfaction with the amount of compensation offered by the developer and the costs and conditions of the relocation. The planning permission stipulated that any development on the land had to consider the fates of the squatters residing on the said land, pay certain compensation, and provide certain facilities and monetary support for their removal. The developers may not be able to compensate the squatters adequately as the condition precedent to the issuance of the planning permission. See, for example, where the rehabilitating party of Phase II of Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, Selangor Darul Ehsan – Permodalan Negeri Selangor Berhad ('PNSB') who had to provide certain facility and monetary provision to the squatters residing in the other area, as required by Majlis Perbandaran Kajang ('MPKJ') and the SA the squatters might have been residing on the sites of the projects for years. Squatter residents have indeed become one of the stumbling blocks to developers if it is not addressed earliest possible. This can be seen in Taman Yew Lean, Lot Number 664, Section 2, Northeast District, Pulau Pinang, developed by (Yew Lean Development Sdn. Bhd), Taman Han Chiang, Lot Number 2343 PB6, Northeast District, Pulau Pinang (developed by Lam Chew Development Sdn. Bhd.), Taman Padang Tembak, Lot No. 688, TS 2, Mukim 16, NED, Pulau Pinang (developed by Urban Resources Sdn. Bhd.), Taman Sri Angsana Hilir, Mukim Ampang, Daerah Ulu Langat, Selangor (developed by Kabra Holding Sdn. Bhd--Crimson Development Sdn. Bhd., Subang 2, Bandar Pinggiran Subang, Shah Alam (developed by Juta Permai (M) Sdn. Bhd), Sentul Indah, Sentul, Kuala Lumpur (developed by Homeng Realty Sdn. Bhd.), Taman Desaria Fasa 6A, Mukim Petaling, Daerah Petaling, Selangor (developed by Villaria PJ) and Sentul Utama Fasa 2, Setapak, Kuala Lumpur (developed by Sentul Murni Sdn. Bhd) (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/1782), n.d.); (Permodalan Negeri Selangor Berhad File Number: PNSB 2/72 Jld II, n.d.); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/365), n.d); (Kementerian Perumahan dan Kerajaan Tempatan File number: 340/D/(547)/E and MHLG/BL/19/547-2, n.d); (Kementerian Perumahan dan Kerajaan Tempatan File Number: MHLG/08/824/2605, n.d.); (Ministry of Housing and Local Government File number: MHLG/08/824/4375/Jld. III, n.d.); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/7930-1), n.d); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/5149-2), n.d.).

Certain legal problems may also occur before the planning permission can be issued concerning certain technical agencies' comments and approval. These technical agencies include Plan Malaysia (Department of Town and Country Planning), JKR, JPS, TNB, TM Berhad ('TM'), State Water Authority, Land and District Administrator, Fire and Rescue Department ('Jabatan Bomba dan Penyelamat'), Department of Sewerage Services ('JPP'), Department of Education, JAS etc. This problem can be illustrated in Taman Cemerlang, Lot Number 3254, Mukim 13, Lebuhraya Thean Teik, Bandar Air Itam, NED, Pulau Pinang, where TNB required the developer to provide an area of land of 2 acres for the erection of a sub-power station by TNB. Due to this new requirement, the developer had to incur additional costs. However, this requirement had not been stipulated earlier. Nevertheless, because the developer did not want to have further problems with the authorities, they finally managed to provide the land after purchasing it from the neighbouring landowner at a very substantial price to erect the sub-power station on it, complying with the direction of TNB (Kementerian Perumahan dan Kerajaan Tempatan, 2019); (Md Radzi Othman, Personal Communication, February 22, 2018); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/7347-I, n.d.).

However, after the provision of this requirement had been met, TNB aborted the direction. This cost the developer substantial expenditure and incurred time on the part of the developer, thus resulting in the abandonment of the project. It appears, therefore, that the requirements imposed by certain technical agencies were not compatible with the principle that they (the requirements) must be fair and reasonable as laid down by the HC in *Tekali Prospecting Sdn Bhd. v. Tenaga Nasional Bhd & Anor* [2002] 1 MLJ 113 (HC of Malaya at Kuala Lumpur).

Certain other new technical agencies are also important and need to be included in the list of such technical agencies if it is expedient to do so. An example is the JMGS, which is responsible for looking into the land, location, and geography of the project sites to confirm that the land and the site are fit and suitable for development within a certain projected development cost. This is to avoid future land erosion and landslides and to avoid any further cost and work to extract hidden hard rocks/granite and unwarranted soil structures (such as slime), which, if not adequately addressed, may lead to abandonment of the projects. This is evident in Taman Villa Fettes, Lots 141 and 3622, Mukim 18, NED, Pulau Pinang. It was found that this project became problematic because the developer had incurred substantial expenditure to extract and remove hidden hard rocks/granite in the soil of the project site. These additional costs and problems were unforeseen matters and not within the developer's, LA and LPA earlier

anticipation (Misri Barnawi, personal communication, June 20, 2019); (Kementerian Perumahan dan Kerajaan Tempatan File numbers: MHLG/08/824/63 97-1, Jld 2 and MHLG/BL/19/6397-I), n.d.).

Similarly, this was also the case for Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, Selangor, where the developer had to incur additional costs of removing slime soils and replacing them with suitable soils and had to carry out substantial piling works to stabilise the soil structure of the project land. Similar too was the case for Taman Dayang, Mukim Kuah Langkawi (developed by INI Holding Sdn. Bhd.) and Taman Perwira, Jerantut, Fasa II, developed by Yee Hoong Loong Corporation Sdn. Bhd, where the purported housing development project could not proceed, as beneath the project land, there were hard granite and geotechnical soil problems resulting in the impossibility of carrying out the piling works, earthworks, excavation, foundation works and erection of the purported house buildings. Unfortunately, JMGS is not included in the list of external technical agencies for the purpose of getting their feedback and comments on any land and soil structure involved in any proposed development. (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/6037, n.d.); ir Abu Bakar Hashim, personal communication, April 17, 2019); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/3947-5, n.d.); (Kementerian Perumahan dan Kerajaan Tempatan File number: MHLG/08/824/4285-1), n.d.).

In the alternative, during the Planning Permission stage, JAS should at least be consulted to look into environmental aspects of the purported project land and location as prescribed under the Environmental Quality Act 1974 (Act 172) and its regulations (section 2 of the Environmental Quality Act 1974 ('Act 127') & Subsidiary Legislation). In this respect, the developer has to prepare the Environmental Impact Assessment Report ('EIA report') for the project to be submitted to the Director-General of the JAS. Nevertheless, the problem is that to warrant the preparation and provision of EIA report, the housing project must at least cover an area of 50 hectares or more. (section 34a (1) of Act 127; First Schedule Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 - PU (A) 195/2015).

Thus, if the housing project area is less than this measurement, the developer is not obligated to provide the EIA report. (Johaimin Johari, personal communication, March 1, 2018).

The State Authority ('SA') and Land Authority ('LA') are superior to the PA and the technical agencies.

The issue of superiority of the LA and SA has undermined the function and role of the PA pursuant to section 108 of the National Land Code 2020 (Act 828)('NLC'), and this is cemented in *The Ordinary Co. Sdn Bhd v. Lembaga Rayuan Negeri Selangor & Anor* [2014] 7 MLJ 705; [2013] MLJU 855 (HC of Malaya at Shah Alam) may also contribute to the occurrences of problematic housing projects due to landslide, soil erosion, soil settlement and soil problems. However, as mentioned before, Mr Azmin Zainul Abidin, a land officer of Kota Setar Land Office, said that this issue is minimal, and the probability of this issue is slim in Kedah.

Similarly, the LPA through OSC can overrule the views of the technical agencies, as the LPA issues the Planning Permission, and the views of the technical agencies, for example, JAS, are not binding on the LPA (Johaimin Johari, personal communication, March 1, 2018; Abd Talip Abd Rahman, personal communication, January 4, 2018; Ahmad Sujairi Md Hassan & Ramziah Abd. Rahman, personal communication, February 15, 2021). Johaimin Johari said:

"I can give an example: a paddy factory must follow JAS's guidelines with respect to the buffer zone, which must measure 200 meters from the proposed housing project. Nevertheless, when JAS provided the views to the LPA that the proposed housing project breaches the buffer zone, the LPA rejected JAS's view. Similarly, this was the case of a project that involved a landslide in Penang. In this project, the EIA report was rejected by JAS, but the LPA still wished the project to proceed."

Further, Johaimin Johari said:

"In respect of soil erosion, landslide… at the earliest point we (JAS) had provided conditions for the purported development, for example, we said that such an area was risky for such a development, like hill slopes, we provided with views that the proposed development was not compatible with development. So, what can we do if they (the LPA) do not obey us?'

Norazizi bin Adinan, the Kedah State Director of JAS, supported the above contention. In addition, the LA or LPA may presume that JAS agreed with the proposed development if JAS fails to provide their views within 14 days from the request made. Thus, JAS must remain vigilant and proactive in policing and monitoring all proposed developments to comply with the JAS requirements and law (Norazizi Adinan, personal communication. January 31, 2021).

Nonetheless, for projects that require EIA Report, JAS will vet and examine it. If JAS is satisfied, the proposed project will be supported. If not, then JAS will require the developer to amend the proposed development in accordance with JAS's views. Besides, JAS also invites other technical agencies to examine the EIA report. These agencies include JKR, JPS and JMGS. In some cases, JAS found the report was fake and inadequate. Thus, the report was rejected (Johanim Johari, personal communication, March 1, 2018).

It is submitted that the decisions of the PA issuing planning permission can be challenged if it is proven that the decisions were made not in accordance with the law as happened in *Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and Another Appeal* [1992] 2 MLJ 393 (Supreme Court at Kuala Lumpur). In this case, the PA should have given the adjoining landowners the right to develop the land subject to the planning permission. This requirement was spelt out in the Planning (Development) Rules 1973, Emergency (Essential Powers) Ordinance No 46 of 1970, the City of Kuala Lumpur (Planning) Act 1973 and the Federal Territory (Planning) Act 1982.

The legal principle in *Datin Azizah* was supported and upheld in *Mayland Valiant Sdn Bhd v Majlis Perbandaran Subang Jaya* [2018] 4 MLJ 685 (CoA at Putrajaya).

The author also wishes to state that, in some planning practices in Malaysia, there needs to be a mention in the planning permission and the comments made by the technical agencies on the possible problem of soils beneath the land of the purported project. This soil problem could cause problems and additional costs to the developer during the construction course. The information, if obtained before the commencement of the development, could provide valuable information to developers before they embark on the purported project and thus could avoid future unnecessary development problems such as soil erosion at the project. This can be illustrated in a problematic housing project at Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu

Langat, Selangor and Taman Lingkaran Nur, KM 21, Jalan Cheras-Kajang, Selangor. There was also no condition in the planning permission in these cases that required the applicant developers to conduct a soil investigation before developing the project (Johar, 2006); (Ahmad Sujairi Md Hassan & Ramziah Abd. Rahman, personal communication, February 15, 2021).

It is noteworthy that despite section 108 NLC providing superiority of the LA over the PA in land development and land administration, the current cases seem to have decided otherwise. This position is reflected in *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] MLJU 98 (Federal Court ('FC') at Putrajaya) and *Majlis Perbandaran Subang Jaya v. Visamaya Sdn Bhd & Anor* [2015] 5 MLJ 554 (CoA at Putrajaya), the FC and the CoA decided that where there is an inconsistency between the category of land use under the NLC and planning control under the TCPA, the TCPA would prevail. This is because, according to both apex courts, TCPA is the later legislation and that being a later legislation, TCPA will prevail over the NLC. Further, the NLC provided, in general terms, land use for agriculture, building and industry. Conditions in individual titles are too cumbersome a means to plan development. Before the NLC, a large number of land titles had been issued. There were other laws and by-laws. It is to these that section 108 was directed. Section 108, however, cannot apply to laws passed subsequently by Parliament and regulations authorised thereunder. In addition, Nallini Pathmanathan FCJ in *Perbadanan Pengurusan Sunrise Garden Kondominium* said the TCPA explicitly provided the proper control and regulation of town and country planning in Peninsular Malaysia. While the NLC addresses land use in individual titles, the TCPA addresses planning by land use zones. By the time the TCPA was promulgated, large numbers of land titles had been issued, with conditions of use that differed from the zoning as often as not. For planned development to succeed, if the condition of use in the title conflicts with the zoning, the condition is almost routinely amended to the use authorised by the zoning. Thus, the FC held that the submission that section 108 renders the TCPA and zoning thereunder inconsistent with land use under the NLC titles null and void holds no merit.

Hence, following the reasoning of the apex courts in the above case law, the provisions under the TCPA would prevail over the provisions under the NLC. It follows that the SA and LA would be subject to the approval of LA and restrictions in land development and administration in Peninsular Malaysia.

Nonetheless, the author submits that the above decisions made by the apex courts were per incuriam and blatantly disregard the express law prescribed under section 108 of the NLC. This section provides that any condition, by-law, or restriction made by the local authority or planning authority that conflicts with the state's authority (land authority) must be subject to and subordinate to the latter. Thus, this law should be amended before the apex courts can make decisions like the above decisions.

Be that as the above may, the author submits that the LPA could be liable for negligence in their failure to exercise duty of care in granting planning permission and failure to exercise proper and sufficient planning control, which partly has caused the detrimental soil erosions. This is because no provision in the TCPA confers on the LPA immunity against any breach of duty and negligence, compared to and provided for the SA and the LA, pursuant to section 95(2) of the SDBA. It is worth mentioning that, in *Wong Lup Tuck & Ors v. Majlis Perbandaran Pulau Pinang* [2016] MLJU 1382 (Planning Appeal Board (Pulau Pinang)), the Planning Appeal board held that the planning authority as a public authority needs to pay heed to public interest, sound planning practices, balance development and the law bearing in mind its responsibilities to the public at large. The liability of the PA is premised on the statutory duty prescribed under the TCPA and other planning acts, equity, torts and administrative laws.

FINDINGS

The following are findings from the above elaboration and discussion:

1) There evidently exists some non-coordination between the federal agencies and the states' agencies as matters relating to town and country planning are placed under the Concurrent List to the Ninth Schedule of the FC as the policies and guidelines relating to soil fitness of the Federal agencies are not binding on the states, unless with the approval and acceptance of the states. Thus, this problem will become a prolonged issue in Malaysia unless both the Federal agencies and States' agencies are aware of and respect the need to preserve the welfare and well-being of the public and protect the rights and interests of the people above their respective political interests and personal judgments.

2) Even though the requirement to refer to the technical agencies is not mandatory on the LPA in the issuance of Planning Permission, they are still liable to ensure that the decision-making process in issuing Planning Permission is reasonable, fair, equitable, and for the benefit of the public, not otherwise. Thus, if there is evidence that the LPA has acted unreasonably to the detriment of the public in the issuance of Planning Permission and other development control approvals, for example, preventive and curative measures to deal with soil erosion, they will be liable at law.

3) So far, relevant planning and technical agencies have not provided comprehensive big data and data analytics to support and facilitate the decision-making process in planning approvals, particularly relating to preventive and curative measures against soil issues and problems. In addition, no legal or statutory requirements impose an obligation on these parties. Thus, it is proposed that some amendments need to be made to relevant statutes with respect to this matter.

4) The recent case in the FC and CoA, *viz*, *Perbadanan Pengurusan Trellises,* reinforces the statutory requirement in section 22(2)(a) TCPA that the LPA must comply with the Development Plan. Thus, the case law that negates the importance of the Development Plan, as evident in *Syarikat Bekerjasama-sama* and *Chong Co*, may no longer be relevant and may be superseded and overruled with the latest CoA case.

5) The recent decisions of the CoA and the FC emphasise that the SA in the land administration is subject to provisions of PA and the TCPA. This is the legal principle made in *Perbadanan Pengurusan Sunrise Garden Kondominium* (FC at Putrajaya) and *Visamaya Sdn Bhd* (CoA at Putrajaya). Thus, in the disposal of lands and land administration involving housing development, the restrictions, conditions and by-laws of the PA will bind the SA. It is submitted, indirectly,

through the binding nature of the conditions and restrictions of the PA over the SA on land administration, this can reduce the risks of soil erosions and soil problems in housing development projects.

6) Some evidence proves the Development Plan, guidelines and views of the technical agencies have not been comprehensively prepared, done and updated, as there is no periodic and updated big data information and data analytics provided by the LPA and relevant technical agencies for each district in Malaysia that can provide comprehensive updated current information of the suitability of all geographical locations for housing development projects. For this matter, new amendments of statutory provisions governing LPA and relevant technical agencies are needed to the effect of imposing a duty on these parties to provide and prepare periodic updated big data information and data analytics in each district in Malaysia as sources and guidelines for consideration and analysis in the issuance of planning permission and other development control approvals.

CONCLUSION

This paper discusses the issues in planning law regarding soil problems in housing development areas. The matters discussed revealed that there are lacunae in the law, policies, and implementation of the responsibilities of the PA as prescribed under TCPA and relevant guidelines. Thus, new approaches and ideas should be introduced to deal with the issues. This could prevent soil problems in the housing development areas and protect the rights and interests of the residents. The prevailing issues, including inadequate development plans, big data, and data analytics over housing development lands, have proven to have caused the decisions, planning policy, and planning control over housing development ineffective and blunt.

There are two significant breakthroughs in the Planning Law. Firstly, the recent decisions of the CoA and the FC in *Perbadanan Pengurusan Sunrise Garden Kondominium* (FC at Putrajaya) and in *Visamaya Sdn Bhd* (CoA at Putrajaya), which declared that the restrictions, conditions and by-laws of the PA and the LPA still bind the SA in the administration of land. Secondly, the FC and CoA case in *Perbadanan Pengurusan Trellises* decided that the policies and directions in the Development Plans bind the PA and LPA.

Hopefully, the new landmark cases decided in the CoA and the FC could pave the way to disciplining and augmenting the planning control and its system in Malaysia, benefiting the public interest, particularly in meeting the challenges of soil erosion in housing areas.

Acknowledgement

This research writing was supported by the Ministry of Higher Education (MOHE) of Malaysia through the Fundamental Research Grant Scheme (FRGS/1/2018/SSI10/UUM/02/1). The author wishes to thank the reviewers for their valuable suggestions on the paper.

REFERENCE

Awang, Adibah, S. M. A. and A. F. N. (2009). Geo-spatial Data Accuracy and Its Legal Implications in the Malaysian Context. *Eighteenth United Nations Regional Cartographic Conference for Asia and the Pacific*, 1–9. https://unstats.un.org/unsd/methods/cartog/Asia_and_Pacific/18/Papers/IP/IP 14 Malayisia GEOSPATIAL DATA ACCURACY.doc.pdf).

Iedunote. (2023). *Legal Research: Meaning, Definitions, and Example*. Ieduenote. https://www.iedunote.com/legal-research

Jabatan Kerjaraya Malaysia. (2009). *Pelan Induk Cerun Negara 2009-2023*. Kementerian Kerjaraya Malaysia.

Jabatan Mineral dan Geosains Malaysia. (2016). *Portal NaTSIS, National Geospatial, Terrain and Slope Information System*. https://natsis.jmg.gov.my/natsisMap/map.jsp

Jabatan Perancang Bandar dan Desa, S. (2007). *Rancangan Struktur Negeri Selangor 2020*.

Jabatan Perancangan Bandar dan Desa Semenanjung Malaysia. (1998). *Standard Prosidur Permohonan Kebenaran Merancang, Mesyuarat Pasukan Petugas Pelan Pemulihan Ekonomi Negara KPKT Bil. 8/98*.

Johar, F. (2006). Environmental Sustainability in Selected Local Plans in Malaysia. In H. A. K. & S. Z. A. (eds.) (Ed.), *Land Use Planning and Environment Sustainability in Malaysia: Policies and Trends* (pp. 255–274). International Islamic University Malaysia.

Kementerian Alam Sekitar dan Air. (2021). *Portal Rasmi Jabatan Alam Sekitar*. https://www.doe.gov.my/portalv1/

Kementerian Kerja Raya. (2016). *Portal Rasmi Kerajaan Malaysia*. http://www.kkr.gov.my/ms/node/118

Kementerian Perumahan dan Kerajaan Tempatan, J. K. T. (2019). *Manual OSC 3.0 Plus Proses dan Prosedur Cadangan Pemajuan Serta Pelaksanaan Pusat Setempat (OSC)No Title*.

Md Dahlan, N. H. (2009). *Abandoned Housing Projects in Peninsular Malaysia: Legal and Regulatory Framework*. International Islamic University Malaysia.

Md Dahlan, N. H. (2022). Flood Disasters at Housing Areas in Malaysia: A Planning Law Perspective. *INSAF, Journal of the Malaysian Bar*, *39*(2), 263–290. https://insaf.malaysianbar.org.my/ojs/index.php/jmr/article/view/14/16

Md Dahlan, N. H. (2024a, July 24). Tackling Soil Erosion Woes. *New Straits Times*. https://www.nst.com.my/opinion/letters/2024/07/108...

Md Dahlan, N. H. (2024b, October 8). Managing Information Flow To Mitigate Flood Disasters. *The STAR*, 15.

Md Dahlan, N. H. (2024c, October 26). Tangani Isu Dan Dampak Bencana Banjir. *Utusan Malaysia*, 18. https://www.utusan.com.my

Ministry of Environment and Water. (2021). *Official Portal for Department of Irrigation and Drainage*. https://www.water.gov.my/

Ministry of Natural Resources and Environment, D. of I. and D. M. (2010). *Guideline for Erosion and Sediment Control in*

Malaysia.
National Housing Department. (2018). *DRN_2018-2025_English_2*.
Pradhan, B., Chaudhari, A., Adinarayana, J., & Buchroithner, M. F. (2012). Soil erosion assessment and its correlation with landslide events using remote sensing data and GIS: A case study at Penang Island, Malaysia. *Environmental Monitoring and Assessment*, *184*(2). https://doi.org/10.1007/s10661-011-1996-8
Prime Minister's Office. (2021). *Speech By the Prime Minister in the Dewan Rakyat 27 September 2021* (Issue September 2021). https://rmke12.epu.gov.my/storage/mediastatementandspeech/2021092820_official_translation_speech_of_yab_prime_minister_tabling_of_the_twelfth_malaysia_plan_2021_2025.pdf
Roslee, R., Bidin, K., Musta, B., & Tahir, S. (2017). Intergration of GIS in Estimation of Soil Erosion Rate at Kota Kinabalu Area, Sabah, Malaysia. *Advanced Science Letters*, *23*(2), 1352–1356. https://doi.org/10.1166/asl.2017.8400
Roslee, R., & Sharir, K. (2019). Soil Erosion Analysis using RUSLE Model at the Minitod Area, Penampang, Sabah, Malaysia. *Journal of Physics: Conference Series*, *1358*(1), 012066. https://doi.org/10.1088/1742-6596/1358/1/012066
Silverman, D. (2017). *Doing Qualitative Research* (4th Edn.). SAGE Publications Ltd.
Sumayyah Aimi Mohd Najib. (2020). Modeling Soil Erosion and Landscape Metric Analysis of River Catchments in Pulau Pinang, Malaysia. *Journal of Southwest Jiaotong University*, *55*(3), 1–14. https://doi.org/https://doi.org/10.35741/issn.0258-2724.55.3.19
Yaqin, A. (2007). *Legal Research and Writing*. LexisNexis.
Yin, R. K. (2014). *Case Study Research: Design and Methods* (5th Edn.). Sage Publications, Inc.