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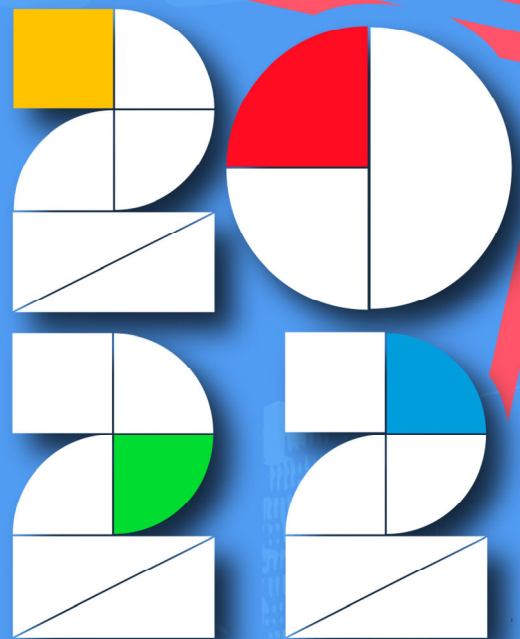
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Reengineering
Knowledge &
Creativity for
Global Excellence

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June



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TECHNOLOGY, SCIENCE, SOCIAL SCIENCES AND
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TeSSH 2022***

**Reengineering Knowledge and Creativity
for Global Excellence**

Copy Editors:

***Nor Azrina Mohd Yusof (Dr.)
Lee Chai Chuen
Juaini Jamaludin
Normaziana Hassan***

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Kedah, Malaysia**

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Copy Editors/Layout :Nor Azrina Mohd Yusof (Dr.)
Lee Chai Chuen
Juaini Jamaludin
Normaziana Hassan

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Foreword

The papers compiled in these e-proceedings are papers presented online at Technology, Science, Social Sciences and Humanities International Conference 2022 (TeSSH I 2022) held on 30 June 2022 at Universiti Teknologi MARA (UiTM) Cawangan Kedah, Kedah, Malaysia. With the theme, ***Reengineering Knowledge and Creativity for Global Excellence***, the conference has brought together presenters of diverse background who shared their conceptual and empirical papers in broad areas that are subsumed under the fields of Technology, Science, Social Sciences and Humanities. These e-proceedings comprise current researches that were undertaken with the rigorous endeavour of knowledge enhancement to ensure that the world of academia will continue to flourish. It is thus hoped that readers will significantly benefit from knowledge contained in these proceedings.

TeSSH I 2022 and these e-proceedings would not have been possible without the great efforts from the presenters, and the generous support from the TeSSH I 2022 committee members and the Rector of UiTM Cawangan Kedah, Prof. Dr. Mohamad Abdullah Hemdi. A heartfelt gratitude is extended to all involved. It is hoped that these e-proceedings will be an impetus to stimulate further studies and research that benefit the society at large.

TABLE OF CONTENTS

1	A Conceptual Paper on Factors That Affect the Shariah Compliance Auditing Among the Islamic Financial Institutions in Malaysia	1
	Saifulrizan Norizan & Marjan Mohd Nor	
2	A Qualitative Study of Entrepreneurial Intention Among UiTM Kedah Accounting Students During Covid-19 Pandemic	8
	Mazlifa Md. Daud, Noora'in Omar, Muhammad Hariz Hamid, Mohd Hafiz Hashim & Anwar Johari	
3	A Review on By-Laws of Alor Setar City Council (MBAS)	21
	Nor Zaini Zainal Abidin, Nur Irinah Mohamad Sirat & Nurul Mazrah Manshor	
4	Accounting For Agriculture in Malaysia: A Special Attention to Aquaculture	27
	Saifulrizan Norizan, Mohd Halim Kadri, Zarina Abu Bakar & Juyati Mohd Amin	
5	Age-Friendly Environment for Older People: Challenges and Plans	34
	Noorlailahusna Mohd Yusof & Suziana Mat Yasin	
6	Aplikasi Inovasi E2 Kit 1.0 Dalam Proses Pengajaran Dan Pembelajaran Litar Asas Elektrik	40
	Siti Rohaiza Zainol, Noor Aziana Abu Taib & Wan Nadirah Rosli	
7	Basic Of Differentiation Using Three Alternative Approach in Seberang Perai Polytechnic	50
	Siti Faridah Ismail, Rosila Adnan & Rohani Hamsan	
8	Bio Natural Food Seasoning from Eugenia Cephalanthum Using Dehydration Method	60
	Hidayah Julaihi, Theivya A/P Santhanasamy & Felicia Bong Lee Chen	
9	Cabaran dan Masa Depan Muzium Negeri Kedah	68
	Juaini Jamaludin	
10	Co-Integration Between Malaysia Stock Market, ASEAN and ASEAN Plus Three Countries During Pre and Post 14th Malaysia's General Election: A Short Run Analysis	72
	Anas Fathul Ariffin, Muhammad Akmal Hakim & Muhammad Hilmi Samian	
11	Computer Science Students' Learning Preferences, Mental Health, And Emotional Issues During Pandemic Covid-19 While Moving Towards Endemic	78
	Ahmad Faiz Ghazali, Noor Azrin Zainuddin, Ahmad Kamalrulzaman Othman & Yusnita Sokman	
12	Customer's Satisfaction: The Role of Food Quality, Service Quality and Ease of Website in Online Food Delivery	86
	Nur Afifah Aliah Husaini, Norhamizan Hamir, Rashid Salleh & Zamri Ahmad	
13	Digital inheritance: Legal Challenges in Malaysia	98
	Nor Azlina Mohd Nor & Ahmad Shamsul Abd Aziz	

14	Digital Literacy: Presentation Made Easy with ACE Alice Shanthi, Nur Izzah Jamil, Sheela Paramasivam, Siti Noor Dian Ahmad & Mohd Nur Fitri Mohd Salim	106
15	Diploma Students' Perceptions of Online Assessment: The Anchor That Holds Them in The ESL Classroom Jaqueline Susan Rijeng, Imelia Laura Daneil, Kimberley Lau Yih Long, Tang Howe Eng & Christine Jacqueline Runggol	115
16	Evolusi Tadbir Urus Dan Perundangan Wakaf Di Malaysia: Satu Analisis Rohayati Hussin, Mohd Zulharmey Abdullah, Afiffudin Mohammed Noor & Farahdina Fazial	125
17	Exploring Strategies to Reduce Adolescents' Involvement in Risky Behaviours from The Perspective Of A Probation Officer Lina Mursyidah Hamzah, Sharifah Muzlia Syed Mustafa, Nurul Fitriah Alias & Norazah Abdul Aziz	142
18	Factors That Lead to Poor Mental Health of Social Media User among UiTM Kedah Degree Students Nur Elisa Aqila Amir Yusrie, Sarah Sabir Ahmad, Azfahane Zakaria & Mhd Azmin Mat Seman	147
19	How The Covid-19 Pandemic Has Increased the Risk of Compulsive Buying Behaviour And Online Shopping Addiction For Apparel Purchasing In Malaysia: An Overview Of Generation Y And Generation Z Normaziana Hassan, Basitah Taif & Rosita Mohd Tajuddin	155
20	Hubungan Antara Impak Teknologi Maklumat Dan Budaya Organisasi Dalam Kalangan Kakitangan FRIM Nor Arinah Mohamed Zemudin, Muhammad Badri Ishak, Nurul Madiha Mohd Ilham & Wan Nur Syazmira Wan Suhaimi	168
21	Inhibiting Factors to Successful Virtual Teaching and Learning in Engineering Science Topic from the Perspectives of Polytechnic Lecturers Nurul Ain Saipudin, Noorul Amilin Saipudin & Nornazira Suhairom	174
22	Inovasi Sosial Melalui Program Akademik Intensif untuk Pelajar STPM Aliran Sains Tercicir Marinah Muhammad, Wong Hie Ling, Aainaa Syazwani Mohamad Amir Hamzah & NoorJanatun Naim Jemali	183
23	Investigating the Usefulness of TikTok as an Educational Tool in Learning Chemistry Nur Farha Shaafi, Mohammad Mubarrak Mohd Yusof, Nurul Nabilla Mohammad Khalipah & Norhazly Mohd Hanif	187
24	IPQUEUE: Indoor Premises Control Using Quick Response (QR) Code for Covid-19 Pandemic Mohd Suffian Sulaiman, Zuraidah Derasit & Sharizah Shahr	200

25	Kajian Arah Kiblat Liang Lahat Lama Bagi Tanah Perkuburan Islam Syed Idrus Syed Salim & Nor Asmadi Asri	213
26	Keberkesanan Kaedah Masa Hakiki Sistem Penentududukan Sejagat Dalam Penubuhan Stesen Kawalan Kerja Ukur Tanah Asiah Abdul Satar, Nor Azme Nordin & Sulzakimin Mohamed	220
27	Kesediaan Pensyarah Sains Kejuruteraan Dalam Pelaksanaan Mini Projek Secara Hibrid Di Politeknik Tuanku Sultanah Bahiyah Nur Elyani Musa, Shamsul Arif Ismail & Azlina Hassan	229
28	Keunikan Partikel 'Lah' Dalam Terjemahan Surah Yasin di Malaysia Mohd Sufian Ismail & Anida Sarudin	238
29	LEVs As an Assessment Tool for Affective Domain In Laboratory Courses For Diploma In Civil Engineering Narita Noh, Noor Raifana Ab Rahim, Nur Zaidani Wati Mohd Darwis & Juwita Asfar	246
30	Measurements of Customer's Satisfaction towards Courier Services in Malaysia during Covid-19 among Students in UiTM Kedah Siti Nursyahirah Zaffendee, Sarah Sabir Ahmad, Azfahane Zakaria & Mhd Azmin Mat Seman	256
31	Measurements Of Depression Level Among Students in UiTM Kedah Adlin Mohd Anizam, Sarah Sabir Ahmad, Azfahane Zakaria & Syed Mohammed Alhady Syed Ahmad Alhady	264
32	Media Arts as An Art-Based Interventions in the Institutional Care Environment Raja Eda Shabina Raja Raimie, Mohammad Kamal Sabran & Nur Zaidi Azraai	270
33	Mengatasi Kesalahan Umum Yang Pelajar Lakukan Semasa Menjawab Soalan Peperiksaan Sains Kejuruteraan Nur Azilina Abdul Aziz, Koa Chee Hoon & Siti Aishah Azmi	279
34	Pelaksanaan Wakaf Air di Malaysia: Satu Tinjauan Tadbir Urus Dan Perundangan Nurul Mazrah Manshor, Rohayati Hussin, Syatirah Abu Bakar, Nur Irinah Mohamad Sirat & Salmah Roslim	288
35	Pembangunan MOOC Bagi Kursus Foundation Mandarin (Level II) Berpanduan Model ADDIE Ting Hie Ling	294
36	Pengaruh Budaya Merantau Terhadap Evolusi Seni Bina Rumah Tradisional Negeri Sembilan, Malaysia Mohamad Hanif Abdul Wahab, Azizi Bahauddin & Nor Aniswati Awang Lah	302
37	Pengesanan Graduan Kolej Komuniti Jelebu Ketika Pandemik Covid-19 Noor Aziana Abu Taib, Siti Rohaiza Zainol & Zainatul Fakhir Zainon	313
38	Penggunaan iPad Dalam Menambakbaik Interaksi Di Kalangan Pensyarah Dan Pelajar Bagi Kursus Matematik Kejuruteraan 1 Mohd Syukor Che Omar & Azlina Hassan	317

39	Penggunaan Video <i>YouTube</i> Dalam Pengajaran dan Pembelajaran Bahasa Mandarin: Satu Tinjauan Awal	328
	Lee Chai Chuen & Nor Azrina Mohd Yusof	
40	Penguatkuasaan Undang-Undang Dalam Menangani Penyalahgunaan Media Sosial di Malaysia	333
	Ahmad Shamsul Abd Aziz & Nor Azlina Mohd Nor	
41	Penyampaian Amalan Pengajaran Dan Pembelajaran (Laboratory Work) Secara Atas Talian Terhadap Pembelajaran Pelajar Diploma Geomatik Politeknik Sultan Haji Ahmad Shah	343
	Nur Aisah Ab Moin & Asiah Abdul Satar	
42	Pelaksanaan Ujian Pra Sebagai Alternatif Untuk Meningkatkan Pencapaian Markah Pelajar Bagi Kursus DBM20023 Matematik Kejuruteraan 2	351
	Siti Norhazlina Shafie & Rosila Adnan	
43	Persepsi Pelajar Terhadap Penggunaan E-Book Dalam Menyelesaikan Tugas Kajian Kes	359
	Farah Abdul Malek, Rohaida Abu Bakar & Liyana Murni	
44	Promoting Learner Autonomy Through Online Global Interactions Among ESL Students	365
	Sharina Saad, Rafidah Amat & Nor Asni Syahriza Abu Hassan	
45	Remote Learning in The Time of Post - Covid-19: The Conceptual Framework of An Interactive PdPR For Primary School Via Visual Basic Programming	380
	Aslina Omar, Samsiah Abdul Razak, Nur Insyirah Mohamad Radzi & Ini Imaina Abdullah	
46	Strategi Pembelajaran Bahasa Melayu dalam Kalangan Murid Cina di Sekolah Jenis Kebangsaan Cina	385
	Wee Kee Quan, Zamri Mahamod & Shamsul Aizuwani Nawi	
47	Stres Dan Kepuasan Kerja: Analisis Inferensi Faktor Gender Dan Status Perkahwinan Dalam Kepuasan Kerja Pensyarah IPG	397
	Punitha Muniandy, Khairani Zakariya, Azhar Mohd Ali & Ahmad Sukari Mohamad	
48	Student Satisfaction of Public Transportation at UiTM Kedah	408
	Muhammad Azizi Azizurrahim, Sarah Sabir Ahmad, Azfahane Zakaria & Mhd Azmin Mat Seman	
49	Sustainable Smart Retirement City: A Concept Paper	417
	Nazmi @ Nazni Noordin, Zaherawati Zakaria, Mohd Zool Hilmie Mohamed Sawal, Mohd Syahmizan Azmi & Adnan Aminuddin	
50	Teknik Retorik Lafaz-Lafaz Berkaitan Dengan Syaitan Dalam Al-Quran	425
	Muhamad Khairul Anuar Zulkepli, Burhanuddin Wahab, Ahmad Fauzi Yahaya & Mohd Zulkhairi Abd Hamid	
51	The Determinants and Impact of Social Media Content on Consumer Engagement	438
	Marha Abdol Ghapar, Azlina Shamsudin, Nazlin Emieza Ngah & Nur Dalila Adenan	

52	The Distraction That Affects Students Focus	446
	Nur Khalyda Kamarol Hisham, Sarah Sabir Ahmad, Azfahanee Zakaria & Syed Mohammed Alhady Syed Ahmad Alhady	
53	The Effects of Varying the Duty Cycle to The Output Voltage in Buck Converter	455
	Nurhazwani Saleh	
54	The Impact of i-Pulih Model Towards Methamphetamine Addicts Recovery in PUSPEN Tampin, Melaka	462
	Muhammad Dhamir Audi Azizul, Wan Munira Wan Jaafar, Azlina Mohd Khir & Samir Muhazzab Amin	
55	The Implementation of National Education Assessment System in Malaysian Primary Schools	473
	Shanusi Ahmad, Nor Hasnida Che Md Ghazali & Mohd Nazir Md Zabir	
56	The Influence of Leadership Style on Lecturer's Performance	481
	Azlina Shamsudin, Nalin Emieza Ngah, Marha Abdol Ghapar & Nur Dalila Adenan	
57	The Internet Addiction (IA) Among Youth Generation	487
	Muhammad Arif Ikhwan Aminuddin, Sarah Sabir Ahmad, Azfahanee Zakaria & Mhd Azmin Mat Seman	
58	The Relationship Between Curricular Activities Among Students' Leadership	493
	Syarifah Nur Bahirah Syed Jamalulil, Sarah Sabir Ahmad, Azfahanee Zakaria & Syed Mohammed Alhady Syed Ahmad Alhady	
59	The Role Entrepreneurship Education in Moderating Intention to Be An Entrepreneur Among Students With Learning Disabilities In Malaysia	504
	Nazlin Emieza Ngah, Nur Dalila Adenan, Azlina Shamsudin & Marha Abdol Ghapar	
60	The Usage of Open Green Space (Planting Strip Area) at the Perimeter of Terrace House Unit by The Residents: Case Study in Taman Sinar Intan, Sungai Petani	511
	Mohd Zikri Mohd Zaki, Nurul Izzaty Zulkipli, Ahmad Faisol Yusof & Tajul Edrus Nordin	
61	The Use of Scaffolding in Helping Students Complete Tasks That Require Higher Order Thinking Skills	525
	Syakirah Mohammed, Fathiyah Ahmad @ Ahmad Jali, Robekkah Harun & Sharina Saad	
62	Time Passed and How Much Time Is Left? A Study on Motivation to Graduate on Time (GOT)	537
	Nur Dalila Adenan, Marha Abdol Ghapar, Nazlin Emieza Ngah & Azlina Shamsudin	
63	Underground Mapping for Islamic Mausoleum	546
	Syed Idrus Syed Salim, Nor Azme Nordin & Sulzakimin Mohamed	

A Review on By-Laws of Alor Setar City Council (MBAS)

Nor Zaini Zainal Abidin

Faculty of Administrative Science and Policy Studies
Universiti Teknologi MARA Cawangan Kedah
zaini637@uitm.edu.my

Nur Irinah Mohamad Sirat*

Faculty of Law
Universiti Teknologi MARA Cawangan Kedah
irinah@uitm.edu.my

Nurul Mazrah Manshor

Faculty of Law
Universiti Teknologi MARA Cawangan Kedah
mazrah@uitm.edu.my

ABSTRACT

The cardinal drawing force of this paper is to review the legislation for the local government. In this sense, by-laws or subsidiary laws are made namely for local authorities to enable the enforcement of local legislation. This is to ensure for public compliance in following rules and regulations by the authorities. Little is known on the exact nature of local government by-laws and as such, it is subjected to the higher authority in drawing up local legislation. This paper focuses on exploring the local government by-laws specifically to the Alor Setar City Council (MBAS). The review on by-laws for the MBAS has found that this provision of by-laws falls into several categories. It can be concluded that the performance of Alor Setar City Council depends on the effective and functional local government system.

Key Words: By-laws, local government, Alor Setar City Council, rules and regulations

INTRODUCTION

Being a third tier in government structure, making the local government as the lowest level kind of government in countries all around. Nevertheless, the significant influence of local government is very much felt by local people since local government deals directly with the public and foresee the implementation of policies and programs. As such, local government or local authority is considered as the field government. On the other hand, Malaysian local government is a state subject, and its jurisdiction is under the state matters except for local government in federal territories (Federal Constitution of Malaysia). In as such, local government have their own laws as stated in paragraph 4 and 5 of the ninth schedule of the Federal Constitution. Therefore, the precise nature of local government can differ between each state or territory.

Additionally, each local authority creates their own by-laws for their area. Being an infra-sovereign body, the creation of by-laws or subsidiary legislation is subject to the approval by the state government. The exclusivity of making their own by-laws, causing for the existence many by-laws for each local authority in each state. This paper explores the by-laws in Alor Setar City Council (MBAS). Alor Setar, being the capital city of Kedah Darul Aman, have created many by-laws to suit their locality and for the ease of businesses in their area. As such, the authors have explored the by-laws in MBAS and the harmonization of these by-laws with the current situational context.

OBJECTIVES

1. To explore by-laws exercised by Alor Setar City Council (MBAS)
2. To review the legislative frameworks of these by-laws
3. To determine/investigate the relevance of the by-laws in MBAS

METHODOLOGY

This article is based on the descriptive and analysis research which involves library-based method. The method chosen is one of the well-known approaches to get the literature material such as books, articles and journals including the Acts of Parliament and any other legal materials. These texts are scrutinized to develop the concept and scope of analysis. Reference is also made by referring the by-laws exercised by Alor Setar City Council (MBAS).

PROBLEM STATEMENT

In term of inter-governmental relationship, the federal structure of government tends to be heavily biased towards the central government. In this sense, states and local governments operate within a framework where they are politically and economically subordinate to the federal government (Nooi, 2006). The establishment of the National Council for Local Government (NCLG) enables the federal government to exercise certain powers over local government. Article 95(A) of the federal constitution stated that the decisions of the NCLG are binding on all state governments. According to Nooi (2006), the NCLG is a body with almost equal federal and state representation is the ultimate authority for deciding local government policy, although it is designed to proceed based on consensus. Through various Parent Act of local government, central control is further intensified.

The state government has a wide legislative power to control the local authority directly and indirectly. Local governments in Malaysia are under the state government as indicated in the State List in the Federal Constitution. Thus, all local government administrative and financial affairs are under the jurisdiction of the State Executive Council, with the State Secretary acting as the intermediary. Hence, any decision that is in term of legislative enactment needs to be approved by the state government. Legislative authority at the state level rests with the State Legislative Assembly or *Dewan Undangan Negeri* (DUN), in which, has the power to the draft ordinances that affect local administration, so long as they are not in conflict with the Federal Constitution (UCLG, 2010). The state government thus, retains a close oversight of local government on almost all aspects of local government matters. For example, Local Government Act 1976 (Act171), Part II on the administration of local authorities, Section 9 (1) regarding power of State Authority to issue directions stated that the state government can issue directions of general character to local authority. In Section 3, Act 171 mentions that the state government, in consultation with the Ministry of Housing and Local Government and the secretary of the Election Commission can, declare and determine the status of local authority areas.

Being the service provider to the public, the above statement of problems clearly provides strong and clear basis for the status and complexity of local government in Malaysia. However, it is acknowledged that the actual patterns of relationship and their effectiveness especially with respect to the development of local government system depends very much on the respective policies and strategies of the state government.

LITERATURE REVIEW

This section is a brief overview on local government by-laws, and it provided some definitions of local government and the nature of local government itself. The government administrative system divides the level of administrative jurisdiction into three levels namely, the Federal Government (FG),

State Government (SG) and the Local Government (LG). Each level has their own jurisdictional limit. Situated at the lowest level of government administrative structure makes local government as an important part in the sense that it served as a direct connection to the public. In fact, the local government serves as a conduit between the state government and the public, with the responsibility of providing services and ensuring that policies are executed and implemented equally at all levels of society (Khalid et al., 2017).

Historically, local government was implemented early on by adopting the British government's approach to governing. When Malaysia gained independence, the function of the local government was restructured to reflect the federalist ideology (Abdullah & Abdullah, 2010). Since the restructuring of local government in 1970s, which was chaired by Senator Dato' Athi Nahappan, local government was made a state subject and infra sovereign in this type of federalism, which implies that its existence is reliant on the act and that it may be combined or restructured as needed. Local government duties are likewise constrained by those ultra vires rules (Nurudin et al., 2018).

In defining local government, the definition provided by Malcolm W. Norris (1980) as cited in Phang (1989) stated that "local government in the context of Peninsular Malaysia means government in urban, rural areas or a combination of these two areas and under the authority of respective state governments. Local governments have a legitimate position and sovereignty of that supreme government. Local government is the third tier in the structure of the Federation of Malaysia". This definition mentioned that local government is a part of the political subdivision within a country (in the federal government system) or state. The power of local government comprises of power to govern areas in urban, rural or a combination of these two areas, and it is under the power or purview of the state government respectively.

Constitutional provision aside, there are few laws passed by the parliament to control the operation of local government in Malaysia. The most important piece of law is the Local Government Act 1976 (Act 171). This act of parliament outlines the form, organizational structure, functions and responsibilities of a local council. At the same time, the Town and Country Planning Act 1976 (Act 172) was promulgated to overcome the weaknesses in the planning of land use in local area. This Act 172 puts the primary physical planning responsibility at local level to the local government. Additionally, the Street, Drainage and Building Act 1974 (Act 133) explains several other roles of local council regarding drainage, maintenance of municipal roads as well as public buildings. In addition to the three main laws, several other laws and regulations including by-laws were created and enforced to help the running of local government. The by-laws are subsidiary law made by a local council under an enabling power contained in a public general act or local act requiring something to be done – or not done – in a specified area. They are accompanied by some sanctions or penalties for their non-observance.

The term "by-laws" refers to the subsidiary legislation of the main law. It was passed to give local governments more power. Orders, Rules, and other forms of subsidiary legislation are examples. By-laws are the powers granted to local governments under the Local Government Act 1976 (Act 171). This implies that the local government can establish proper by-laws to guarantee that their administration region runs well. A by-law is a legal document that governs how the local government performs its responsibilities and powers in relation to the administrative region designated by the state government (Suzei et al., 2018).

Kedah is one of the 13 states of Malaysia and is situated in the north of the Peninsular. There are 12 Kedah Darul Aman State Authority such as Alor Setar City Council, Sungai Petani Municipal Council, Langkawi Municipal Council Tourism City, Kulim Municipal Council, Kubang Pasu Municipal Council, Baling District Council, Pendang District Council, Yan District Council, Sik District Council, Padang Terap District Council, Bandar Baharu District Council and PBT Taman Perindustrian Hi-Tech Kulim.

The Alor Setar City Council was established under the Local Government Act 1976 (Act 171), being the body responsible for managing the Alor Setar City area based on local interest, as well as a local planning authority under the Town and Country Planning Act 1976 (Act 172). Alor Setar City Council is directly tasked by law to formulate and implement development planning policies based on centralised locality in accordance with the policies set by the Government. The Alor Setar City Council administers an area approximately 666 square kilometres with a multi-racial population of

359,000. As the state capital of Kedah, Alor Setar serves as the centre of administration, commerce, sports, finance, politics, religion and education. Now under the leadership of the Mayor, the Alor Setar City Council continues its effort to transform the city into a dynamic and distinguished city.

RESULT AND DISCUSSION

In Malaysia, local government, being the third tier of government also serves as an important mechanism to further promote the policies, and to facilitate the implementation of relevant strategies and programmes of the federal and state government. According to section 2 of the Local Government Act 1976 (Act 171) local authority means “*any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 4 of the Federal Capital Act 1960*”. Furthermore, section 2 of the Local Government Act 1976 (Act 171) also defines “*by-laws as any by-laws made by the local authority under any power in that behalf conferred upon such local authority by any of the provisions of this Act or in force by virtue of the provisions of this Act*”. The local authority is empowered to formulate by-laws about development a planning control. Section 98 of the Local Government Act 1976 (Act 171) states that “*the local authorities may make by-laws for the inspection and regulation of burial grounds and crematoria within and without the local authority area provided by the local authority under subsection 94(1) and as to the depth, length and width of graves and places of interment therein and generally to carry out the provisions of this Act in relation to all matters connected with the good order of such burial grounds and crematoria, due regard being had to the religious usages of the several classes of the community.*” Various by-laws have been enacted to cover activities such as traffic management, parking regulation, cleanliness, park maintenance and public health.

On that note, Table 1 and Table 2 highlighted on the division of by-laws in MBAS and types of by-laws created by the MBAS. Table 1 showed that there are six main divisions in which several by-laws are created for these divisions respectively.

Table 1: Division of By-Laws in MBAS

No	Division	The By-Laws
1	Business Management Division	i. Food Establishment Licensing By-Laws (MPKS) 1989 ii. Kedah Hawkers (Local Authorities) By-Laws 1983
2	Landscape & Recreation Division	i. Kedah State Park By-Laws (PBT) 1983 ii. Vandalism By-Laws (MPKS) 1991
3	Public Health Division	i. Public Toilet By-Laws (MPKS) 1990 ii. Stray Animals By-Laws (MPKS) 1992 iii. Advertising By-Laws (MPKS) 1992 iv. Barber Shops and Hairdressers By-Laws 1989 v. Trade, Business and Industry By-Laws (MPKS) 1989 vi. MPKS Market By-Laws 1989 vii. Control & Supervision By-Laws viii. By-laws for the Control & Supervision of Guest Houses (MPKS) 1988 ix. Private TLK Licensing By-Laws (MPKS) 1988
4	Corporate & Special Projects Division	i. Swimming Pool By-Laws (MPKS) 1983 ii. MPKS Road Traffic (Metered Parking) By-Laws 1993 iii. MPKS Motorized Cars (Parking Places) By-Laws Order 1982 iv. Speed Limit Order (MPKS) By-Laws 1992 v. Private Parking Licensing By-Laws (MPKS) 1988

5	City Service Division	i. Prevention of Defilement By-Laws, Kedah Local Authorities 1983 ii. Garbage Collection, Disposal and Disposal By-Laws 1983 iii. Prohibition of Smoking in Stages By-Laws 1978
6	Building Division	i. Roads, Drains and Buildings (Compounding of Offenses) By -Laws MPKS 1989 ii. MPKS Building By-Laws (Fees) 1988 iii. Building By-Laws (Parking Facilities for Cinemas, Theatres and Other Large Buildings) MPKS 1988 iv. Earthworks By -Laws (MPKS) 1991

Table 2: The By-Laws of MBAS

No	By-Laws
1	Massage House By -Laws (MPKS) 1991
2	Local Government By -Laws (Election Advertisements) MPKS 1990
3	Uniform Building By-Laws 1984
4	Building By -Laws (Sewage Tank and Imhoff Tank Cleaning Charges) MPKS 1988
5	MPKS Building By-Laws (Fees) 1988
6	By -Laws (Compounding of Offenses) PBT Negeri Kedah 1983

The result above showed the By-Laws for Alor Setar City Council (MBAS). It is observed that it existence has many variance and depends on the locality of each local authority. For instance, The Street, Drainage and Building Act 1974 (Act 133) together with the by-laws made under "Uniform Building By-Laws" administer building control matters in Malaysia. Additionally, Malaysia's federation consists of 13 states and three federal territories, in which individual local governments within these states may have varied administrative procedures. As pointed out by Chan (2001), "Uniform Building By-Laws" exist in several states and territories (Kamarulzaman, P.N., 2022). A reference made to the Alor Setar City Council, there is Uniform Building By-Laws 1984, and the latest amendment of the law is in 2017. (Local Government Department, 2022) In exercise of the *power* conferred by *section 133* of the Street, Drainage and Building Act 1974 [Act 133], the state authority has the power to enact by-laws for any reason that he deems necessary. The formulation of Uniform Building By-Laws 1984 which was originally formulated to address the need for a standardized set of building regulations for the country have now been argued to possess discrepancy and not uniform (Kamarulzaman, P.N., 2022). By-laws are gazetted by different state governments before being enacted by local governments, their application varies. Section 31A of the Town and Country Planning Act 1976 (Act 172) also indicates the existence of inconsistency between building by-laws (Kamarulzaman, 2022).

Moreover, the enforcement of the Environmental Quality Act is being hampered by jurisdictional and by-laws issues (Wan Junaidi, 2017). A lack of synergy in enforcement between state and federal agencies, that were involved in ensuring environmental protection and sustainable development practices, had resulted in great environmental damage (Wan Junaidi, 2017). There are disparities between the jurisdiction of the Federal Government and that of state governments, which result in obstacles when we want to enforce the law, especially concerning the approval of projects that threaten the environment and wildlife (New Straits Times, 2017).

CONCLUSION

The main objective in the formation of local government is to become the service provider to the local people. As an agent in service delivery, by-laws or subsidiary legislation has been created to ease the operation of local government. The restructuring of local government further intensifies the functions and credibility of local government. Even though the variety of by-laws existed within respective local government, their creation is nevertheless important for the survival and effectiveness of local government.

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