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COMPARATIVE PLANNING SYSTEMS BETWEEN SARAWAK AND SELANGOR: STATUTORY PROCESS

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Abstract

This paper is written purposely to explain in detail the nature of the planning systems in Sarawak and Selangor by discussing the issues and differences in the main components of planning law. The state of Sarawak has been chosen as a subject of the paper due to the limitation of knowledge and documented research particularly on the planning system while Selangor has been chosen as a comparative subject because of the state's experiences in managing the development in urban areas. The differences in the planning systems between Sarawak and Selangor are because of the provisions in the Federal Constitution. Different planning systems brought together issues and problems especially in managing urban development, hence indirectly hindering the process of development in our country. The issues and problems are explained by the components of legal provisions from the overall perspective of legal framework, the planning administrative structure, the development plan mechanism and the development control system. This paper is actually part of a research conducted in fulfilling the requirement of masters degree in specialism in built environment.

Keywords: Planning Law Components, Planning System

1. Introduction

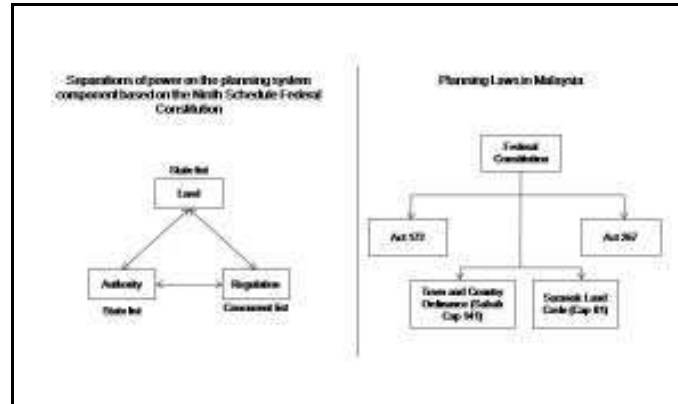
Malaysia consists from four (4) main administration regions which are Peninsular Malaysia, Federal Territory, Sabah and Sarawak; with total cover up area 330,420 kilometers square (Department of Statistic 2009). In term of government administration, there are two (2) levels of government administration as stipulated by the Federal Constitution, which are the federal and state, while local authority falls under jurisdiction of state authority. Meanwhile, for planning administration structure, it's divided into four (4) main structures which are Federal Territory, Peninsular States, Sabah and Sarawak. The Act 172 is being used as main guidance for planning system in Peninsular states while Act 267 for the Federal Territories, Town and Country Ordinance (Sabah Cap 141) for Sabah and Sarawak Land Code (Cap 81) for Sarawak.

The Federal Constitution is the foundation for the planning laws for the whole states in Malaysia particularly on article 74, 76, 95D and 95E. In additional, the Ninth Schedule of Federal Constitution explained in detail the separation of power between two (2) level of authority (federal government and state government) as well as the subject matter on the concurrent list. These are the provisions that shaped the planning system in Malaysia.

2. Legal Framework of Planning System

The difference planning system between Selangor and Sarawak is because of the provisions in the Federal Constitution that allows Sarawak to be independent in term of the land development, while in the other hand, the development in Selangor has been uniformed with other states in peninsular Malaysia by adopting Act 172 (M. J. Bruton, 2007). To explain further, the Article 76 of Federal Constitution provides the federal government to establish a law in order to ensure the uniformity of laws for the whole states in peninsular Malaysia. Based on this provision, Act 172 has been established in 1976 to guide the planning system in Malaysia (Department of Town and Country Planning Peninsular Malaysia, 2011). However, there are exceptional and exclusion for Sarawak which enables this state to be independent in certain matters as special provision provided by the Federal Constitution. The article 95D stipulated the exclusion for the state of Sabah and Sarawak of parliament power to pass the uniformity of laws about land and local government. As for the federal territories, the Ninth

Schedule provides the power to the authority for federal territory to make law in planning matter and as a result, the Act 267 established on 1982 (Department of Town and Country Planning Peninsular Malaysia, 2011).



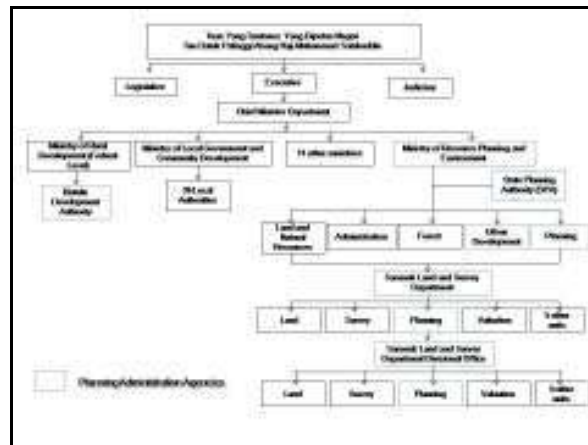
Source: Adapted from Federal Constitution, 2010.

According to A. Ahmad Fuzi, land, authority and regulation are the components of planning system (A. Ahmad Fuzi, personal communication, November 1, 2011). Based on the Ninth Schedule of Federal Constitution, matters regarding to the land and authority falls under the jurisdiction of the state authority. However, on the matter of planning regulation, it's stipulated under the concurrent list-which is the shared responsibility of the federal and state authority. The differences between planning system caused by the provisions in Federal Constitution brought together issues and problems. Moreover, the formulation of general policies for the whole states in Malaysia could be hindered because the different types of planning system. Thus, it indirectly affects the development progress and policies formulation in our country.

3. Planning Administration

Under the respective laws, State Planning Authority responsible in the policy making in Sarawak, while State Planning Committee responsible for the state of Selangor. In Selangor, the distinct flow of hierarchy regarding to the planning authority is provided by Act 172 - from the federal level (National Physical Planning Council) to state level (State Planning Committee) and the local level (local planning authority). By having clear and distinct hierarchy, it will facilitate the policy making from the federal government to state and local authority and indirectly contribute to smooth and efficient administration. However, in Sarawak, there is no linkage between planning authority where the flow of planning administration stops at the state level. This indirectly creates disputed linkage between state and federal authority on planning matters.

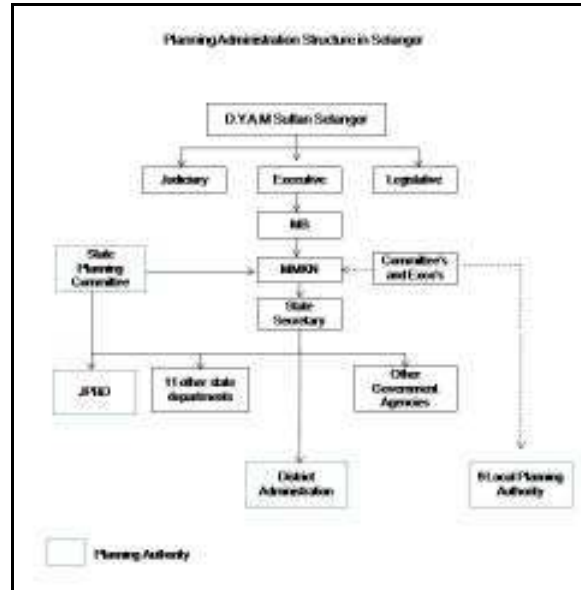
4. The Structure of Planning Administration in Sarawak



Source: Adapted from State Government of Sarawak Official Website, 2010.

Taking into consideration on the member of State Planning Authority and State Planning Committee, the State Planning Committee has more members to be compared to State Planning Authority in term of decision making.

Mixture members comprise from politician, technical body, professional as well as the administrator makes State Planning Committee more democratic. But having many technical agencies and members, it may overrule the urban planner decision making. For State Planning Authority, which the members comprise from politician and professional, it may seem undemocratic, but, decision making can be decided straight forward by considering only the important technical agencies recommendation such as the technical body situated in the Land and Survey Department, Engineering Department, local authority as well as Public Work Department and its suite with the geographical characteristic in Sarawak which comprises with eleven (11) divisions, 31 districts and 28 sub-districts (State Government of Sarawak, 2010)



Source: Adapted from State Government of Selangor Official Website, (2011).

The decision making in the local level in Selangor falls under the Local Planning Authority jurisdiction while for Sarawak it still under the State Planning Authority. Although in practice, the State Planning Authority has been divided into three (3) committee to ease the decision making process (A. Z. Abang Kassim, 2005), still, it unable to decreased the workload and bottleneck of the Secretary State Planning Authority (Ministry of Resource Planning and Environment) and the implementer agency (Sarawak Land and Survey Department) especially in preparing and processing the planning permission before the State Planning Authority gives their consent of approval (approximately there are around 1849 pending planning permission application according to Ministry of Resource Planning and Environment Sarawak, 2010). This circumstances show that, there is no separation of power between planning authority but clear hierarchy of planning authority is provided by Sarawak Land Code (Cap. 81). Apart from that, it's very difficult for the State Planning Authority to monitor and decide the best for the whole state of Sarawak. Although the state government located Sarawak Land and Survey Divisional Office in every divisions, its only act as processing agency to facilitate the development but still the State Planning Authority to consider the final decision.

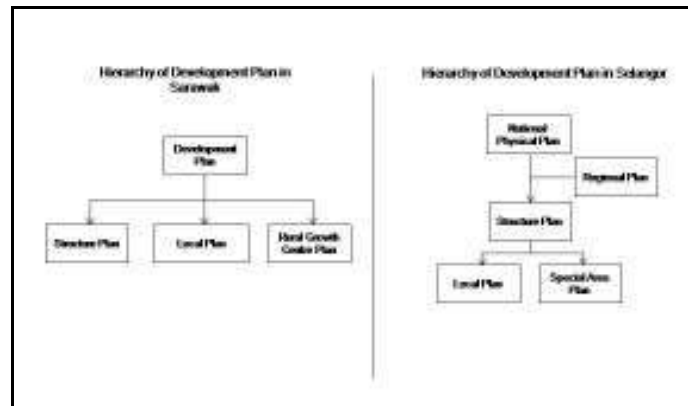
Compared to Selangor, which the Local Planning Authority responsible in undertaking the development in their territorial area. The power that has been given to the Local Planning Authority enables effective and the best decision making can be made because the Local Planning Authority knows their area better than any other authority and able to communicate with the local community which may contribute to the decision making process. In Sarawak, we must understand that, it's merely impossible to delegate the power of decision making regarding to the development to all the local authorities in Sarawak, by considering the geographical character, development rates as well as scattered population. However, in certain urban area, where development rates are high, the power to decide on development planning permission should be granted by the State Planning Authority.

5. Development Plan

Usually, in a systematic and comprehensive urban planning, the development plans were used as a guidance and formulation of the development. Development plans can be categorized into many types, according to its function, character, objective and the content. Basically there are two (2) type of development plan (A. Ahmad Fuzi 2010) that normally established by the planning authority to be used as a guidance in development control;

the statutory development plan mainly stipulated and provided in the legal provision; while non-statutory development plan provide informal guidance to the authority toward development in certain area. As what have been discussed previously, particularly on the planning administration, the most crucial issue regarding to the development plan, is similar to the planning administration, where there is no linkage and relationship between the development plans. Relatively, the development plan should be interrelated between each other to ensure the correlation on the policies decided from the federal level to local level. In Selangor, Act 172 provides distinct flow and hierarchy of development plan, started from the National Physical Plan to the structure plan and local plan as well as the special area plan. However, in Sarawak, the linkage and correlation of policies in development plans stops at the state level because of the difference planning laws adopted. The National Physical Plan has excluded Sarawak and caused Sarawak to be left behind in term of the national policy.

The purpose of structure plan, mainly, to guide or as reference for any authority regarding to the development in their area. As far as this study is concern, the structure plan in Sarawak may not be same with the Selangor indeed, but analysis regarding the operation, purpose, concept as well as mechanism of structure plan shows that there are differences especially in term of responsible agency and preparation procedure of the development plan. Apart from that, there are huge differences in term of cover-up area of the structure plan. It is understand that, the geographical character of Sarawak required the context of structure plan to be narrower compared to Selangor. Next, the local plan is where most of the applicant who desire to apply for development application will always referred to. Local plan determine the future of an area, by providing the guidance and hindrance of the development that going to be executed. The local plan in Sarawak is more on providing the information in particular area while in Selangor it is more on the comprehensive plan as guidance for future development based on the study in various sector.



Source: Adopted from Act 172 and Sarawak Land Code (Cap. 81)

Certain issues can be rise up in discussing the development plan especially structure and local plan in Selangor and Sarawak, one of them is the procedure of preparation of development plan. It is well known that, the Sarawak Land Code (Cap. 81) only provides the definition of structure plan and development plan without stating the procedure of preparation. For the responsible agency on the development plan, the State Planning Authority still holds the power to prepared the development plan (section 229 (1)(3) Sarawak Land Code Cap. 81). Compared to Selangor, the procedure of preparing the development plan is well explained. The procedure of preparing the development plan shall be included in the planning law in order to enhance the process of preparation and indirectly provide clear and systematic guidance to the related planning authority.

In term of the responsible agency, State Planning Authority seems to carry a lot of responsibility by looking onto the power that has been granted by the Sarawak Land Code (Cap. 81). The development plan, particularly the local plan, should be prepared by the local planning authority because of the knowledge that their holds. Apart from that, the provision of development plan both for structure and local plan in Act 172 seen to be more public oriented by providing public inspection and objection. This is what the Sarawak has being lacking off, the provision of the development plan in Sarawak Land Code (Cap. 81) should enable the public to participate in the decision making of the development plan in order to gives their opinion and negotiation between the people and the government.

The form and content of the development plan in both states shall facilitate the physical development. Both Act 172 and Sarawak Land Code (Cap. 81) provide clear form and content of the development plan. However, the current form and content as stipulated under Sarawak Land Code (Cap. 81) and Act 172 is outdated and need further amendment. For example, the preparation of the development plan takes too long and hindered the development process especially involving the zoning conflict. In certain cases, the developers are required to wait until the new development plan to be gazette. New mechanism of development plan need to be

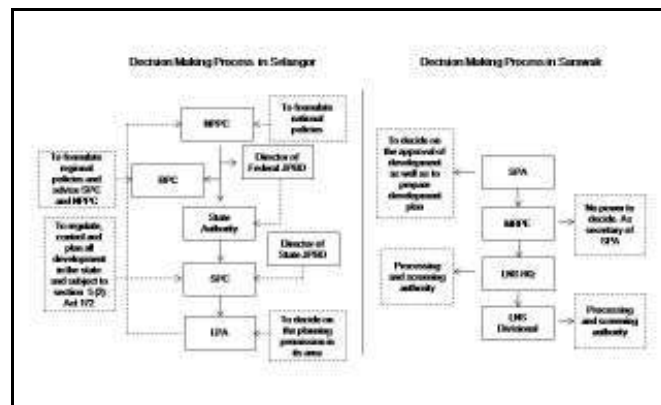
introduced for both states, so that, development plans provided will able to control and facilitated the physical development.

The legal status for development plan in Sarawak is also one of the most crucial issues. It is well known that, Sarawak Land Code (Cap. 81) did not provide the obligation for the authority to gazette the development plan. This circumstance did not only, affect progress of the physical development itself, but also encourage abuse of power. The authorities were able to decide by their own jurisdiction, without taking into consideration of the details and objectives of the development plan, if the development plan is not to be gazette. This can caused bias and personal interest in the decision making process. In order to ensure justice and transparency, each development plan must be gazette so that its can be an effective tool in the development control.

6. Development Control System

One of the most discussed issues within the development control system in Sarawak Land Code (Cap. 81) is the power of the decision making, particularly on the planning permission application. In Act 172, the Local Planning Authority has been given the power to decide on the planning permission, while Sarawak Land Code (Cap. 81) provided that the State Planning Authority is the responsible planning authority to decide on the planning permission application for the whole state of Sarawak. It has been discussed that, the decision making in the local level should be given to the planning authority in that particular area so that an effective decision making can be made. The practices in Sarawak, which based on the provision in Sarawak Land Code (Cap. 81), are contradicted with the concept of local autonomy (H. Ahmad Atory, 1991), which required the local authority to be independent. The power falls within State Planning Authority shows that there is no delegation of power that allowed the local autonomy to be implemented. In order to improve the urban governance, the planning authority should be independent so it would contribute to fast and effective decision making.

It is important to understand that, although the process in processing planning permission takes lot of time (minimum of 230 working days) (Ministry of Resource Planning and Environment, 2010 and Sarawak Land and Survey Department, 2010) and involved many planning authority, there still no comprehensive provision in Sarawak Land Code (Cap. 81) regarding to the planning permission application procedure. Compared to Act 172, there are no clear provisions on certain development control mechanism such as specific period of approval, objection by the neighboring land owner, appeal board, procedures of preparation as well as other requirements needed in the planning permission provided by Sarawak Land Code (Cap. 81). In order to ease and fasten the process of planning permission application, comprehensive provision on the statutory procedure should be provided. More over, comprehensive statutory procedure on planning permission application can enhance the development process and indirectly contribute to the better urban development.



Source: Adapted from Act 172, (2008) and Sarawak Land Code (Cap. 81), (1999).

In order to uphold justice and democracy, Act 172 provided the Appeal Board to hear the appellant made by the applicant whose submission rejected. Apart from that, the owner of neighboring land, were also, be able to appeal or object against the decision made by Local Planning Authority. The appeal board and the objection by the owner of neighboring land have not been provided by the Sarawak Land Code (Cap. 81). It is very important for the planning authority in Sarawak to consider the appeal and objection against the decision made by the planning authority to ensure fair and effective decision can be made. By allowing the appeal and objection, this indicates that the planning authorities in Sarawak are concerned and allowed the public to participate in the development process. Apart from that, it can contribute to the better urban governance in Sarawak in order to accomplish the government transformation program.

7. Conclusion

As a conclusion, there are differences of planning system in Selangor and Sarawak which brought together issues and problems. Both planning system has their own weaknesses and strengths caused by the legal provision as well as the geographical characteristic. The planning system in Selangor seems to have the element of public oriented and sophisticated mechanism compared to Sarawak. However, its does not determine the total effectiveness of the planning system by considering the differences in the geographical and local character. Both planning system need further improvement and the amendment of Act 172 and Sarawak Land Code (Cap. 81) is needed in order to ensure better urban governance and development so that we can achieve the government transformation program.

8. Summary on the Differences of Planning System in Selangor and Sarawak

	Selangor	Sarawak
Planning Administration	Distinct hierarchy of planning authority form federal level to local planning authority. There is separation of power within authority. Mixture member in each authority comprises from politician, technical body, professional as well as the administrator.	No separation of power but clear hierarchy of planning authority. Member of State Planning Authority comprises from politician and professional while the technical body situated in the Land and Survey Department. Linkage of administration stops at state level.
Development Plan	Provide clear form and content of the development plan. Provide the procedure of preparation of the development plan as well as the responsible agency. Enable the public participation and the time frame of development plan preparation. Development plans have to be gazette.	Incomprehensive form and content of the development plan. No provision on the procedure of preparation of the development plan. Did not provide the obligation for the authority to gazette the development plan. Correlation on the development plan stops at state level.
Development Control	Comprehensive procedure of processing the planning permission as well as all the requirements needed. More technical agency in decision making process. Provides appeal board and power to decide fall within Local Planning Authority jurisdiction. Clear period of approval.	The procedure of processing the planning permission is provided as well as the requirements needed. No appeal board provided and power to decide on the planning permission falls within State Planning Authority not the Local Planning Authority. No period of approval.

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