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A COMPARATIVE STUDY OF PENALTY OR LEVY IMPLEMENTATION AT STATE LEVEL IN PENINSULAR MALAYSIA

Nurul Azreen Syamira Azlan¹, Nor Azalina Yusnita Abdul Rahman^{1*}

¹Department of Built Environment Studies and Technology, College of Built Environment, Universiti Teknologi MARA, Perak Branch, Seri Iskandar Campus, 32610, Seri Iskandar, Perak Malaysia
2021621796@student.uitm.edu.my, *norazalina@uitm.edu.my

ABSTRACT

National Affordable Housing Policy allows states to impose penalties or levies on developers who get exemptions from developing affordable housing. However, its implementation is not uniform and only seven states have implemented it and categorized as fixed percentage (Perak), range of percentage (Kelantan), and fixed value (Terengganu, Kedah, Pahang, Melaka, and Johor). The research aims to identify similarities and differences between implementation of penalties or levies for the exemption from developing affordable housing at the state level. The research is qualitative research and structured interview session is used to collect data. The chosen states as respondents for each category are Perak, Kelantan and Terengganu. Research findings show that all states implement penalty or levy to support national policies and use fund to redevelop exempted affordable housing units. The exemption application process involves developers applying to each state government, conducting an investigation, and deciding whether to approve or reject the application through "Majlis Mesyuarat Kerajaan Negeri". For differences, penalty or levy rate is determined based on one-to-one basis, cost of construction, location and project feasibility and affordable housing prices is determined by the state governments. The effects of this implementation vary, such as fluctuating open price housing units, decreasing supply and demand mismatch, and preventing developers from taking advantage of exemption granted. Therefore, future researchers should study the most suitable amount of penalty or levy for private developers to ensure uniformity and increase efficiency in affordable housing development in Malaysia.

Keywords: *penalty or levy, affordable housing development, private developer, comparison between states*

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INTRODUCTION

National Affordable Housing Policy (NAHP) has been prepared with the aim to provide a standard, specification, price range, and guidelines for affordable housing development in the country. All the states in Malaysia must adopt and follow these policies to implement affordable housing development in their states. The policies include the definition of affordable housing, characteristics of affordable housing, government initiatives, and access to housing finance. Under the characteristics of affordable housing, the government has set a regulation to control the development of affordable housing in which the federal government has given the responsibility to the local government to control the development and its price range according to the needs of the populations within the area of its jurisdiction (National Housing Department, 2019). Furthermore, the state government also can impose a penalty and grant conditional approval for any exemption from developing affordable housing according to the approval and consideration of "*Majlis Mesyuarat Kerajaan Negeri*" based on a comprehensive study of the real estate market, supply and demand studies and strong justification (National Housing Department, 2019). Thus, the policy implementation varies among the states, especially for the imposition rate of the penalty or levy on the developer granted the exemption from developing affordable housing. Based on the policies that have been designed by each state in Malaysia, there are several states that establish imposition rates for the penalty. The research will highlight the comparison between the imposition of penalty rates among the chosen states that share similar characteristics in the implementation of this penalty and levy rates.

Problem Statement

The provision of affordable housing is still a major issue in Malaysia. Based on the Twelfth Malaysian Plan, the government has aimed to build as many as 500,000 units of affordable housing all over the country in the year 2025. However, due to the current challenges and issues in the housing sector such as the increment of materials price for the construction and mismatch between the supply and demand of houses by location, it has demanded the government to intervene for a better solution. Hence, the government has formulated National Housing Policy (NHP) and National Affordable Housing Policy (NAHP) to provide the basis, standard, and guidelines for the implementation by state and local governments.

Based on these policies, the state government will design its policies that are suitable to be implemented within the states and have led to a different method of implementation in providing affordable housing to the citizens. This situation may lead to inefficiency in the development of affordable housing in Malaysia. According to Preece, Hickman and Pattison (2019), who has argued that the success in the implementation of affordable housing is the result of interactions and reforms within

policies that have been introduced. Moreover, in Wan Zulfadhli Syahman, Tuan Nooriani, and Iskandar Hasan's study (as cited in Nuruddin, Syed Abu Bakar and Jaafar, 2015), the establishment of policies and special regulations at the state level also will affect the whole implementation of the housing project. The main issue that has been highlighted in this study is the involvement of bureaucracy in housing management which are in terms of the continuity of implemented policies, process of assessment and measurement of the accuracy of policy implementation, appropriateness of the framework project work and strategy for implementation in each state. This can affect the effectiveness of the policy implementation between states. This includes the implementation of affordable housing development control which is the imposition rate of the penalty or levy on the developer that is granted the exemption from developing affordable housing established at the state level. Hence, the difference in implementation of the penalty rate by states government in Malaysia can cause inefficiency in overall affordable housing development in the country.

Objective of Research

The main objective of this research is to identify the similarities and differences between the implementation of penalties or levies for the exemption given from developing affordable housing at the state level.

LITERATURE REVIEW

According to Oxford Languages (n.d.), a penalty or levy can be defined as a punishment, charge or fine imposed for breaking a law, rule, or contract. As stated under NAHP, the federal government allows the imposition of penalties or levies on these developers and the state government can implement this policy at the state level (Jabatan Perumahan Negara, 2019). Based on this national policy, the penalty or levy is imposed on the developer because he gets the exemption from developing affordable housing in his project through the decision-making in "*Majlis Mesyuarat Kerajaan Negeri*" of the states involved. The purpose of this penalty or levy imposition is to ensure that the developers follow the rule to build affordable housing units in supporting the government's effort to provide affordable housing and to control the development of affordable housing in the country.

Summary of Penalty or Levy Rates in Malaysia

The implementation of the penalty rate for the exemption from developing affordable housing has not been fully implemented in all the states in Malaysia based on the literature review of all the states' housing policies. In Malaysia, it shows that only seven states that implement the penalty or levy imposed for the developer which are Perak, Kelantan, Terengganu, Pahang, Melaka, Kedah and Johor. However, all the

states have their own penalty or levy rates imposed in their states which as shown in Table 1 below. Therefore, it can be concluded from this table that there are three main categories for the penalty or levy rate used by the state government at the state level which are fixed percentage, range of percentage and fixed value.

Table 1: Implementation of Penalty or Levy at State Level

Category	State	Penalty / Levy	
Fixed Percentage	Perak	<ul style="list-style-type: none"> • Low-cost housing • Medium-cost housing • Affordable housing • Open price housing 	10%, 50%, 75% & 100% as fixed in table provided in state policy
Range of Percentage	Kelantan	<ul style="list-style-type: none"> • Low-cost housing • Medium-cost housing 	5%, 7% or 10% Decided by Majlis Mesyuarat Kerajaan
Fixed Value	Pahang	<ul style="list-style-type: none"> • Majlis Perbandaran • Majlis Daerah 	RM35,000 per unit RM30,000 per unit
	Kedah	<ul style="list-style-type: none"> • Rumah Kasih Rakyat • Rumah Aman Kedah • Rumah Makmur Kedah 	RM50,000 per unit RM75,000 per unit RM150,000 per unit
	Johor	<ul style="list-style-type: none"> • Affordable Housing 	RM40,000 per unit
	Melaka	<ul style="list-style-type: none"> • Rumah Bahagia • Rumah Sejahtera • Rumah Impian (Type A) 	RM 70,000 per unit
	Terengganu	<ul style="list-style-type: none"> • RMM Type A 	RM 70,000 per unit

(Source: Researcher, 2023)

METHODOLOGY

The research methodology developed for the purpose of this study is qualitative research because it is the most effective and reliable to achieve the research objectives that have been mentioned before. Qualitative research can be defined as a process of naturalistic inquiry that seeks an in-depth understanding of social phenomena within their natural setting (University of Texas Arlington, 2021). The research is designed as comparative research which is the research that attempts to compare two samples and identify similarities and differences between these samples (Richardson, 2018).

As the research is about the implementation of penalties or levies under states' affordable housing policies at the state level, the research includes all the states in West Malaysia (twelve states) with only seven states implementing the penalty rate. These states then are divided into three categories because there are several states

that share similar characteristics in the established penalty rate which are the penalty rate at a fixed percentage (Perak), at a range of percentages (Kelantan), and fixed value (Terengganu, Pahang, Kedah, Melaka, Johor). The categorization is made to ensure that the data collected is not repetitive. Hence, the sample for this research is three respondents which are Perak, Kelantan and Terengganu. A study emphasizes that in qualitative research, the important thing for sampling is always information adequacy or to be more specific information richness rather than the determination of sample size (Sharat Kumar, Satish Kumar, Govindaraj, N.R.V. Prabu, 2020).

For sampling techniques, the research used criterion sampling. In criterion sampling, individuals, groups, or settings are selected because they meet the criteria. This method is developed for the purpose of quality assurance of the data collection (Miles & Huberman, 1994). For this research, the criteria of the sample are they must have knowledge of the state's affordable housing policy and working at the *Lembaga Perumahan dan Hartanah Perak (LPHP)* for Perak, *Bahagian Perumahan Pejabat Setiausaha Kerajaan Negeri Kelantan* for Kelantan and *Unit Perumahan Pejabat Setiausaha Kerajaan Terengganu* for Terengganu. This is because the study needs a better understanding in implementation of penalty and levy in each of the states. All of the department mentioned are the department that manages and control housing development in each states involved.

Next, the research instrument used in data collection is a one-to-one structured interview session with the respondents. All the questions have been determined before the interview session and all the respondents involved answered the same questions during the interview sessions. Lastly, content analysis is used to analyse the data and all data is interpreted in form of table.

ANALYSIS AND FINDINGS

Based on the data that has been collected during the interview sessions, several aspects have been determined to compare the implementation of penalties or levies in these states. The aspects are the aim of the implementation, justification of penalty rates and affordable housing prices, the process of implementation, and effects of the penalty or levy implementation at the state level. All the data has been analysed and put into Table 2 as follows.

Table 2: Summarization for Comparison of Penalty or Levy Implementation Between Each States.

Factors	Perak	Kelantan	Terengganu
Aim	<ul style="list-style-type: none"> • To encourage the development of affordable housing by the private sector. • To redevelop affordable houses, that have been given exemption conditions to developers, using penalty funds. 	<ul style="list-style-type: none"> • To ensure that the provision of affordable housing is implemented in accordance with the National Affordable Housing Policy through the State Government. • The fees charged will be used by the State Government for the construction of affordable housing. 	<ul style="list-style-type: none"> • To monitor and control the provision in which the private sector is required by state government to develop affordable housing in their development projects. • Use the fund to develop back the number of affordable housings that are given exemption.
Justification of Penalty / Levy Rate	<ul style="list-style-type: none"> • Based on a one-to-one basis. *(100% penalty rate for the exemption of low-cost housing) 	<ul style="list-style-type: none"> • Based on the location of the project and the feasibility of the development projects *(either 5%, 7% or 10%) 	<ul style="list-style-type: none"> • Based on the housing prices determined which is also related to the cost of building the affordable housing.
Justification for Affordable Housing Prices	<ul style="list-style-type: none"> • It can be or not based on the current market value. (According to location, land use, accessibility, facilities and amenities) 	<ul style="list-style-type: none"> • It is not based on the current market value and the price is determined by State government 	<ul style="list-style-type: none"> • It is not based on the current market value but it is based on the decision of the state government. (According to demographic, location and economy of the states)
Process	<ul style="list-style-type: none"> • As the same in Figure 1 	<ul style="list-style-type: none"> • As the same in Figure 1 	<ul style="list-style-type: none"> • As the same in Figure 1
Effects of Penalty / Levy Implementation	<ul style="list-style-type: none"> • Developers must follow the rules by state government to develop affordable housing in the state or pay the 	<ul style="list-style-type: none"> • Developers are responsible to develop affordable housing in the state. • Decrease mismatch between supply and demand especially for the 	<ul style="list-style-type: none"> • Helping state government to provide affordable housing in the state. • To ensure the developer not taking advantage

	penalty charged. • It will lead to fluctuation in open price housing unit.	place that are not suitable for affordable housing unit in the state.	of the exemption granted
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(Source: Researcher, 2023)

According to the data that have been analysed, it can be seen that there are similarities and differences in the implementation of penalties or levies at these state levels.

- Aim of penalty or levy implementation

Based on all the respondents, it is shown that there are similar main aims of the imposition of penalty or levy is to ensure and control the involvement of the private sector in the development of affordable housing in each state as recommended in the National Affordable Housing Policy. If the developers still do not want to develop the affordable houses, they need to pay a penalty or levy to the state government and this money will be used to redevelop the affordable houses that are not developed by the developer. Hence, the development of affordable housing will be still on track for all the states in pursuing 500,000 units of affordable houses in 2025.

- Justification for penalty or levy rate and affordable housing prices.

Next, the differences in penalty or levy rates in each state are also shown in the analysis. The most different implementation of penalty or levy imposed on the exemption from developing affordable housing is in Kelantan. This is because the levy imposed is based on the range of the percentage which will be decided in the "*Majlis Mesyuarat Kerajaan Negeri Kelantan*" compared to in Perak and Terengganu where all the penalties and levies are fixed whether it is in percentage or the value in determination of levy or penalty amount. Besides, in the amount of the penalty or levy, it can be seen that Kelantan has the lowest rate of the levy which is the highest imposition rate the ten per cent from the affordable housing compared to Perak and Terengganu which the amount is as highest as the affordable housing prices determined.

This difference can bring advantages and disadvantages in the development of affordable housing in each state. The advantage of a low amount of penalty is many industries player will have an interest to invest in states that imposed lower amounts of penalty or levies compared to other states that have higher penalty rates because they can pay the penalty and develop open prices housing than affordable housing. The disadvantage of low penalty rates is

the state government need to pay for additional cost to rebuild the affordable housing which actually should be borne by the developer. It is vice versa for the states that implement a high amount of penalty or levy. Hence, this will lead to difficulties in the development of affordable housing in that state.

Most housing prices determined by the state government mostly are not based on the current market value. This is to ensure that the price determined by the state government will always be controlled in the price range that is between the affordability of residents in the states based on the location, demographic and others.

- Process of the application for the exemption from developing affordable housing in a project.

All the states showed similarities in the procedure for the developer to apply for the exemption from developing affordable housing. All the applications must be in writing to the state government stating the issues and problems faced by the developer to develop affordable housing. Then, the decision will be made in "*Majlis Mesyuarat Kerajaan Negeri*" of each state to either approve or reject the application based on several factors to be considered. This shows that the procedure to implement the penalty or levy is similar in each state and its consideration factors because all of the states use the same process when investigating the case for the exemption which is as in Figure 1.



Figure 1: Flowchart Process of Penalty / Levy Implementation at State Level

(Source: Researcher, 2023)

- Effects of penalty or levy implementation

Based on the analysis, the private developers must develop affordable housing in the states after all the states' policies have enforced the development of affordable housing as one of the conditions for the planning approval of the development project.

The difference is that in Perak, a fluctuation of open price housing units may happen because the developers who are penalised may increase the price of the other housing units to include the cost to pay the penalty into these housing prices. For Kelantan, it will help in decreasing the mismatch of supply and demand of affordable housing in a location that is not suitable for the development of affordable housing. Lastly, for Terengganu, the levy implementation is to ensure that the developer is not taking advantage of the exemption granted because the developer needs to pay a levy that amounts to as high as the price of affordable housing to the state government. Hence, the implementation of a penalty or levy at the state level can affect the condition in planning approval for housing development, the housing market, supply and demand as well as the responsibility of private developers in developing affordable housing.

CONCLUSION

In conclusion, the implementation of penalties or levies at the state level has similarities and differences. The similarities in the implementation of the states chosen are the aim of the implementation and the process of exemption application. Moreover, for the differences, these states show differences in the justification of penalty or levy rate determined, housing prices, and effects of the penalty or levy implementation at the state level. All the differences can bring advantages and disadvantages towards the efficiency of the penalty or levy implementation at the state level. This also will be affecting the whole affordable housing development in Malaysia because if there are only certain states that imposed higher penalties or levy rates for the exemption, it may result in the abandonment of the housing project or the land owned by the private developer because of low-profit margins gained. The states that implement low penalties or levy rates also need to use their state government funds more to cover the cost of redeveloping the affordable housing that has been exempted from being developed by the developers. Therefore, there will be an imbalance in affordable housing development in each state and contribute to the inefficiency of affordable housing development at the national level.

As a recommendation, this study hopes that future researcher can study the right and most suitable amount of penalty or levy that need to be paid by the developer for the exemption granted. This is to ensure that there will be a uniform penalty or levy rate across the country so that the difference may not be the strengths or weaknesses for the states in the development of affordable housing in Malaysia. The uniformity in the implementation of penalties or levies at the state level also ensures the efficiency of affordable housing development to achieve Federal Government's goals to develop 500,000 units of affordable housing in Malaysia by the year 2025.

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Tarikh : 20 Januari 2023

Prof. Madya Dr. Nur Hisham Ibrahim
Rektor
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