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Practicalities of Strata Lease Schemes in Malaysia

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Abstract

This paper aims to review the implementation of the strata leasing concept in Malaysia. The study's objectives are to identify the laws that guide the development process of strata lease schemes and determine if these laws support the strata leasing concept. Multiple case studies were conducted on all strata lease schemes in Penang. The finding shows several Malaysian laws required to develop and administrate strata lease schemes. The study proved that current legislation supports Penang's strata lease schemes effectively, and the true character of the strata lease scheme is identified as the result of the study.

Keywords: strata lease scheme; land law; residential buyer; urban development

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1.0 Introduction

The concept of strata title leasing was first introduced in Penang in the late 1980s when the Strata Title Act was introduced in 1985. Despite this, it was never known to many until recently. This concept was popularized nationally due to a similar development concept of strata scheme in Medini, Johore. Simultaneously, the introduction of Waqf land development in Penang has also grabbed public attention. Residential units are sold through a lease agreement between the buyers and the Penang Islamic Religious Council (MAIPP). Unfortunately, not many people understand the concept of leasing strata titles. Most are used to land title leasing, where the landowner agrees to lease out his land for a certain period, and the land owner's agreement as the lessor and lessee is made to secure the term of leasing between these two parties. But it was never aware that the same method used in land title leasing could also be applied to leasing strata titles. Before this study, strata lease schemes were never known to have existed in Penang for many years. They have never been recognized as strata lease schemes since there were no differences in the physical appearance of strata buildings. After strata building construction, strata titles are issued to the building. However, this strata scheme is not acknowledged as a strata lease scheme. It is significantly important because, by law, a strata lease scheme does not exist during the planning approval phase or the completion of the construction phase. A strata lease scheme is created only upon the lease registration onto all strata titles. Strata lease schemes are initially formed by the law of the land leasing registration onto strata titles as explained in National Land Code 1965. The definition of the strata lease scheme is still foreign to many since the terminology of the strata lease scheme was never formally introduced in Malaysia.

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2.0 Literature Reviews

Creating strata lease schemes may not be a popular choice since buying a lease property has been seen as a temporary possession of a property. According to Nasarre Aznar (2014), leasing property may not be considered homeownership in some countries. The National Land Code 1965 explains the process of land title leasing, and there was no provision precisely defining the process of strata title leasing. However, since section 5 of the Strata Title Act 1985 was introduced, it allows Strata Title Act 1985 to be read and construed with National Land Code 1965. Therefore, registering a lease on the land title shall too be applied to the strata title.

The creation of lease onto strata titles has given a different meaning to regular strata schemes in Malaysia. Since strata leasing was never formally known to many, there was an initiative by the previous policy team to introduce a similar concept. The private lease schemes were once proposed to cater to the need for development strata schemes in Medini, Johor. The studies by Abu Bakar et al. (2021) and Mohsin et al. (2020) tell the ideology of creating a private lease scheme in Medini, but this concept was only a vision of how Medini's development should be. In reality, no legislation exists regarding the private lease scheme, and there was no actual implementation of the private lease concept. Currently, Medini's development uses the same concept of strata lease scheme similar to Penang. Abu Bakar et al. (2021) study elaborated on the legal framework under the National Land Code 1965; however, it was never mentioned how the National Land Code 1965 framework of lease works and connects with other legislation that supports the concept of private lease scheme. Both Bakar et al. (2021) & Mohsin et al. (2020) study suggested creating new laws for private lease schemes. This gap has given a reason why this study should cross-reference other Malaysia's legislation to set up a complete legal framework that may sustain the concept of the strata lease scheme or the introduction of the private lease scheme ideology.

Although strata lease schemes exist in Penang, they are not identified as strata lease schemes because, physically, they look the same as other typical strata schemes. One can only tell the difference once one looks into the strata title of each unit. The title will show that the original landowner is registered as a proprietor, and strata buyers are registered as lessees or trustees in the strata lease scheme. A typical problem is Penang's waqf strata scheme and Medini's strata schemes in Johor. For example, the situation in the waqf strata scheme is that a lease agreement was put in between the lessor and lessee, allowing the lessee to form a management corporation in the said schemes. A study by Zamri (2019) proved that lessees, also known as unit buyers, are unable to form the management corporation of the building since the Strata Management Act 2013 only allows the proprietor to form the management corporation. Another issue arises in Medini's strata scheme on the lease agreement stating that a lessee is as good as a proprietor. This statement contradicts the National Land Code 1965, where a proprietor has an ownership right to the land, where a proprietor is a lessor to a registered lease. A lessee only has the right of possession due to the lease interest within a lease term period. A possession is barely ownership under National Land Code 1965.

3.0 Methodology

This study is qualitative research that uses a multiple case study methodology (Othman, 2017). Data collection is based on an interview with the land proprietors of the Trustees of Leong San Tong Khoo Kongsi (Penang) Registered, the City Council of Penang Islands (MBPP), and the Islamic Religious Council in Penang (MAIPP). These interviews were extended to Land Administrators and Land Registrars in the Department of Director Land & Mines Penang. The case study method is also a reason to analyze a specific environment as much as possible. More data were collected and analyzed by adopting a multiple case study approach (Noble & Heale, 2019), thereby better describing the strata lease scheme. The strata lease schemes used as the case study subjects are twenty-four Khoo Kongsi's strata schemes located in Bandar Baru Farlim, the Marina Bay Condominium, the Sri Pangkor Apartment, the Midland Court, and three Waqf strata schemes. These case subjects are analyzed to find their similarity in developing the building and administrating the strata leasing on the schemes. This similarity includes identifying the characteristics that differentiate these buildings as lease schemes from the typical strata schemes and identifying the law that governs these schemes. Data from interviews are supported and cross-referred with documentation such as planning permission, the subdivision of strata files, minutes of the meeting, strata titles, and strata books.

4.0 Findings

It was found that the development process of building a strata scheme and a strata lease scheme is very much similar. There is no specific legislation to regulate and administrate a strata lease scheme. It involves other Malaysian legislation to understand this scheme. Still, there are significant differences to show the difference between a strata scheme and a strata lease scheme. In a typical strata scheme, most unit buyers are registered as proprietors on strata title, while unit buyers are registered as lessees for strata lease schemes. A strata lease scheme only exists when a lease is registered onto a strata title, and this registration of the lease involves all units in the scheme. Creating a lease on a strata title is the significant intention in creating a strata lease scheme. This intention also involves selling a strata unit to the buyer through a sales and purchase agreement, and a lease agreement is created between landowners. Regardless of how a lease agreement is made, a lease will only be valid when registered. This study also found that the National Land Code 1965 is not the only law supporting the governance of strata lease schemes in Penang. Table 1 shows several other Malaysian laws that support the concept of strata leasing.

Table 1. Malaysian Legislations in Implementing Strata Leasing Concept

Legislation	Related Provision	Features in Strata Leasing Concept
Federal Constitution	Article 8(2), Article 11(3)(c), Article 13(1), Article 13(2), Article 76(4), 9 th Schedule List II – State List	<ul style="list-style-type: none"> No discrimination against citizens in the property right Right to property Compulsory compensation Ensuring uniformity of law The land is a state matter
Housing Development (Control and Licensing) Act 1966	Part IV, Housing Development (Control and Licensing) Regulation, Schedule H & Schedule J	<ul style="list-style-type: none"> Regulate the law in housing development Tribunals for homebuyer's claim Agreement of selling & buying
National Land Code of 1965	Part Fourteen, Part Fifteen, Part Sixteen, Part Eighteen, Part Twenty, Part Twenty-One, Part Twenty-Two, Part Twenty-Seven, Part Thirty-One & Part Thirty-Three (A)	<ul style="list-style-type: none"> Creation of lease, Registration of lease, Condition in a lease agreement, Renewal of a lease, Revising leasing conditions, Forfeiting a lease and Expiring of the leasing period Instrument of lease, transfer & charge (Form 14A, 15A & 16A) Registration processes Limitation of the registrar Indefeasibility of a registered lease Survivorship Transmission on the death of the lessee Land/parcel searches & compensation Jurisdiction of the court Restrictions in respect of non-citizens on land interest
Probate And Administration Act 1959	Part II, Part V, Part VI	<ul style="list-style-type: none"> Grants of representation Power, rights, duties & obligations of representatives Administration of assets (including leased property)
Small Estates (Distribution) Act 1955	Part II	<ul style="list-style-type: none"> Administration of small estates (including lease as a registerable interest)
Strata Management Act 2013	Part IV, Part V, Part IX, Schedule Two	<ul style="list-style-type: none"> Strata management before the existence of Management Corporation (formation of Joint Body Management (JMB) among buyers) Strata management after the existence of Management Corporation (decision making of sole proprietors as a Management Corporation) Disputes & Strata Tribunal
Strata Title Act 1985	Part II, Part III, Part IVA, Part IVB, Part VIII, Part X	<ul style="list-style-type: none"> Application of subdivision of building and certified strata plan Registration of strata title Vesting of Management Corporation by statutory Power to make strata rules Parcel quit rent Termination of a subdivided building (termination of lease)
Town And Country Planning Act 1976	Part II, Part IV, Part V	<ul style="list-style-type: none"> Regulate the planning of strata building development
Trustee Act 1949	Subsection 16(1), 17(1) & 17(2), 18(1), 19, 20(1) & 20(2), 21(1), 24(1), 26(1), 27(1), 28(1) & 28(2), 29, 30(1), Subsection 39(1)(a), 39(1)(b), Subsection 40(1)(a), 40(2), 40(7) Subsection 45(1)(a), 45(2) Subsection 40(7), 47, Subsection 40(1)(b), 23(1) 23(2)	<ul style="list-style-type: none"> Power of Trustees Maximum number of trustees appointed Appointment of trustees by an instrument Appointment of trustees by court Equal power to new or additional trustees Survivorship

5.0 Discussion

This study shows that current Malaysian legislation supports Penang's strata lease schemes effectively, where Penang's strata lease schemes practically use available law without proposing a new law. The private lease scheme ideology requires amendment law, which is unlikely to be since it will affect other schemes existing in current law. Some problems with the current strata lease scheme may be due to a lack of understanding of strata leasing. Suppose the current development of the strata lease scheme is facing the issue. In that case, the people involved do not truly understand the legislation, the key processes, and the limitation of a strata lease scheme during the planning phase of development. It was made as if the development of the strata lease scheme was similar to any regular strata scheme, and this was the cause of the most problem in the current developed strata lease schemes. Therefore, in furtherance of this study, the characteristic of strata lease schemes is identified based on the legislation review made in the case study and from the analysis of the data collected. The characteristic of strata lease schemes is summarized and shown in Table 2.

Table 2. The Characteristics of Strata Lease Scheme

Strata Lease Scheme Features	Law References	Comment & Justification
The purchaser of a strata parcel is a lessee, while the owner or the strata title is the lessor	-	Based on the input from primary data collection
It is a single proprietorship or sole ownership. All strata parcel of a strata lease scheme belongs to one owner.	Section 17 (1), Section 17(2) & Section 17(3), Strata Title Act 1985	Once strata title is issued to the building, the management corporation will be next to the landowner. The proprietor to all strata titles will be the previous landowner. No transfer of ownership of the strata title occurs in any strata lease scheme.
If there is more than one buyer in a strata unit, these buyers are not registered as lessees but as trustees. The number of trustees permits the registration of no more than four persons.	Section 225(2), National Land Code 1965 Section 39(1)(a) & 39(1)(b), Trustees Act 1949	As the law requires, no lease may be granted to two or more persons otherwise as trustees. The number of trustees to be nominated may not exceed four persons.
The purchaser and parcel proprietor sign a lease agreement documenting the purchase of a strata unit with a 99-year lease term. This lease will not be effective until the registration of the lease instrument (Form 15A). The buyer may sell the strata unit by transferring the remaining term of the lease to the next buyer using an instrument of transfer (Form 14A)	Section 221(4) & Section 218(1), National Land Code 1965	Registration of instrument enforced the lease made between parties
A strata lease scheme involved lease registration onto all strata titles. If some parcel units are transferred to the purchaser and some leased, this building is just a regular strata scheme and not a strata lease scheme.	-	Based on the input from primary data collection
The lease registration concerned the entire parcel area, including the accessory parcels attached to the parcel. No lease may be granted for a partial parcel or land in the stratified lease scheme. Also, no sublease may be granted or entered on the strata property in a strata lease scheme.	Section 34(3) & Section 69, Strata Title Act 1985	The accessory parcel shall not be dealt with separately from the main parcel as the statute requires.
The landlord's lease on each strata parcel is for a 99-year term. It ensures that each strata unit sold is bankable, and the bank can authorize a registerable charge on the lease. If the given lease term is lower, the strata leased unit is unfavorable to bank financing.	-	Based on the input from primary data collection
A registered lease is an indefeasible registration that any party cannot contest unless the registration is fraudulent or the instrument of registration is invalid.	Section 340(1), National Land Code 1965	A lease agreement agreed between the lessor and lessee must be registered in strata title to protect the interests of both parties. Although a registered lease does not constitute ownership, the lessee has full rights to the strata unit during the lease term.
A lease is a registerable interest on strata title and the lease held by a lessee or trustees in the entire area of the parcel, including the accessory parcel, as the lease does not have an undivided share.	Section 345(1), National Land Code 1965	The lessee or trustee holds the lease interest jointly and accordingly. There is no part of the interest held by each of the trustees.
Under the strata lease scheme, a Joint Body Management (JMB) may be formed among strata unit buyers. However, once strata title has been issued for each parcel, there is only one owner for all strata parcels, and that single owner becomes the Management Corporation.	Article 2(3) of Second Schedule, Strata Management Act 2013	Where a Management Corporation has only one owner, the sole owner may make any decision. Any such decision shall be deemed a decision of the management committee of the Management Corporation.
Lessee or strata unit buyers in the strata lease scheme have the same opportunity in Strata Tribunal as any property owner in the regular strata scheme.	Section 107, Strata Management Act 2013	A purchaser of a strata unit is entitled to file a claim to Tribunal as mentioned in Strata Management Act 2013

6.0 Conclusions & Recommendations

The National Land Code 1965 is not the only law governing strata lease development. Other Malaysian laws, including Strata Title Act 1985, Strata Management Act 2013, Trustees Act 1949, Federal Constitution, Probate and Administration Act 1959, Small Estates (Distributions) Act 1955, Town and Country Planning Act 1976, and Housing Development (Control & Licensing) Act 1966, are to be read simultaneously. The interviews revealed that the respondents have extensive experience administrating Penang's strata lease schemes based on the available law. Understanding the experiential process allows the researcher to question, assess, and interpret the practical functioning of the respondent (Kelly & Cordeiro, 2020). It is crucial to understand the true features of strata lease schemes for the leasing concept to be workable and compliant with applicable Malaysian law. The limitation of knowledge of the strata leasing concept has

restricted the development of lease schemes to Penang and Johor only. Although the creation of specific legislation to regulate strata lease schemes may not be likely, some guidelines on this concept should be proposed as a reference for future developments to be expanded to other states in Malaysia. A guide can help anyone planning, building, managing, and administering strata lease schemes. A framework that includes development stages, critical processes, legal requirements, vital administrative rules, and the person responsible for building and managing such systems will help eliminate any possible misunderstanding of a strata lease scheme. A new framework can improve land usage for Waqf land, customary Malay land, religion land, land with many registered owners under a single title, and State land with special conditions. It will allow for more development on this unique type of land and will help to increase the land values. Potential investments and income can also be increased through land leases (Matveeva & Kholodova, 2018).

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Paper Contribution to Related Field of Study

This research identifies the actual concept of the strata lease scheme allowed in Malaysia based on the applicable law. Although there is no complete framework or model for the development process of the strata lease scheme, this study will help policymakers better understand current legislation and the current condition of strata lease schemes before embarking on improved policy or legislation development. However, as there have been no formal studies on the concept of leasing for strata construction in Malaysia and unknown knowledge of what strata leasing schemes should look like, this study is viewed as a basis for future researchers to advance this knowledge.

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