

THE LIABILITY OF LOCAL AUTHORITY IN RESPECT OF RESIDENTIAL  
DEVELOPMENT

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*Untuk keluarga yang tercinta yang telah memberikan ruang masa yang begitu berharga. Khas buat isteriku tercinta, terima kasih yang tidak terhingga di atas sokongan moral yang diberikan kepada suamimu, untuk anak-anakku terima kasih kerana mengizinkan abah mencuri zaman anak-anakmu dengan kesibukan menyiapkan kajian ini. Semoga segala usaha ini menjadi contoh dan peringatan kepada kalian bahawa menuntut ilmu itu tiada penghujungnya.*

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## **ABSTRACT**

The Local Authority has always been burdened with the rising of claims, disputes and litigations. In most cases, Local Authority is said to be the responsible party in any of the defects of the buildings built in its administrative areas, in particular in the residential project. Other than that, the local authority is also entrusted with the responsibility of controlling the activities of environmental, services, enforcement, taxes within its jurisdictions. Local Authority is also entrusted to address with the issues of planning approval, building approval, issuing of the Certificate of Fitness for the building project and other related responsibilities. However, in residential development, the parties involved are from various fields including the professionals, the government departments, the business people and others. Therefore, the focus is not only on the local authority in case of any incidents or mishaps occurred in relation to buildings. In line with this issue, this research attempts to study the extent of liability of parties involved in the residential development, with main focus on the local authority. In doing so, the research attempts to examine the stand of the existing legislations and of the Courts on this issue to see the possibility of getting the conclusive answer on the liability of a specific body. The research was conducted by analysing the local and foreign cases and local legislations. In this attempt, it is concluded that, although the legislations gives some positive indications in the issue of immunity of the Local Authority, but in many of the decisions of the courts, the uncertainty and the discouraging results on this aspect were found.

## ABSTRAK

Pihak Berkuasa Tempatan seringkali dibebani dengan peningkatan tuntutan-tuntutan, pertikaian dan litigasi. Dalam banyak keadaan, Pihak Berkuasa Tempatan dikatakan sebagai pihak yang bertanggungjawab dalam apa-apa kerosakan pada bangunan-bangunan yang dibina dalam kawasan pentadbirannya, secara khususnya projek kediaman. Selain itu, Pihak Berkuasa Tempatan juga diberi kepercayaan dengan tanggungjawab mengawal aktiviti-aktiviti persekitaran, perkhidmatan, penguatkuasaan, cukai dalam bidangnya. Pihak Berkuasa Tempatan juga diberi kepercayaan menangani isu-isu kelulusan perancangan, kelulusan bangunan, pengeluaran Sijil Layak Menduduki bagi projek pembinaan dan tanggungjawab berkaitan yang lain. Walau bagaimanapun, dalam pembangunan kediaman, pihak-pihak yang terlibat adalah dari pelbagai bidang termasuklah profesional, jabatan kerajaan, ahli perniagaan dan lain-lain. Oleh yang demikian, fokus bukan sahaja kepada Pihak Berkuasa Tempatan dalam kes-kes kemalangan dan bencana yang berlaku yang berhubungan dengan bangunan. Selaras dengan isu ini, kajian ini cuba untuk mengkaji takat liabiliti pihak-pihak yang terlibat dalam industri pembinaan, dengan fokus utama kepada Pihak Berkuasa Tempatan. Dalam melakukannya, kajian ini cuba untuk meneliti pendirian perundangan yang sedia ada dan juga Mahkamah dalam isu ini bagi melihat kemungkinan mendapat jawapan yang konklusif mengenai liabiliti bagi sesuatu badan yang spesifik. Kajian dibuat dengan cara penganalisan ke atas kes-kes tempatan dan luar negeri serta ke atas perundangan tempatan. Dalam cubaan ini, kesimpulan telah dibuat bahawa, walaupun perundangan memberikan suatu tanda positif dalam isu kekebalan Pihak Berkuasa Tempatan, namun dalam banyak kes-kes Mahkamah, ketidakpastian dan keputusan yang tidak menggalakkan dalam aspek ini telah ditemui.

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**LIST OF ABBREVIATIONS**

CFO	-	Certificate Of Fitness
CIDB	-	Construction Industry Development Board
EIA	-	Environment Impact Accesement
EPU	-	Economic Planning Unit
EXCO	-	Executive Council
FLSE	-	Federal State Liaison Committee
ICU	-	Implementation and Coordination Unit
LA	-	Local Authority
NCLG	-	National Council Local Government
NDPC	-	National Development Planning Committee
NEC	-	National Economic Council
NFC	-	National Finance Council
NSC	-	National Security Council
STCPD	-	State Town Country Planning Department
TNB	-	Tenaga National Berhad
UBBL	-	Uniform Building By-Law

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# **CHAPTER 1**

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## *Introduction*

## CHAPTER I

### INTRODUCTION

#### 1.1 General

Administratively, Malaysia is organized along a three-tier type of government i.e federal, state and local government. The local authority is a dominant local public entity at the local level in Malaysian Government. The major functions of Malaysian local authorities can be summarized as environmental, public, social and developmental. Local authorities have been given wide powers within Local Government Act 1976 such as in Part IX, for controlling matters on food, markets, sanitations and nuisance, Part XIII, for the power to enact By-laws and Part XV, in matters of rating and valuation. This requires local authorities in Malaysia to perform multifarious roles that include:<sup>1</sup>

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<sup>1</sup> Andrew Stevens, Political Editor *Local Government in Malaysia ,Malaysia's Towns and Cities are Governed by Appointed Mayors* <http://www.goggle.com>

- (a) Efficient service delivery functions and employment generation;
- (b) The normal system maintenance function for public places, drainage and sewerage, market places and crematorium, road maintenance and street-lighting, landscaping and maintenance, public health and sanitation;
- (c) The development planning and control and management functions (building control, land-use planning, development, creation of industrial estates etc.);
- (d) The promotion of tourism and urban renewal beautification programmes; and
- (e) Infrastructure development and support facilities which could facilitate industrial development and other local-based economic development initiatives.<sup>2</sup>

The provision of section 101 of the Act gives further power to the local authority to exercise these functions accordingly.<sup>3</sup> The functions not only include mandatory functions but discretionary functions as well. The mandatory functions include all critical functions such as refuse collection, street lighting and activities pertaining to public health. Discretionary functions include all development functions such as providing amenities, recreational parks, housing and commercial activities. In the face of rapid growth and the pressure to fulfill multiple needs of the local citizens and the private sector community, the scope of functions and responsibilities of local authorities are expanding every day.

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<sup>2</sup> Section 101 Local Government Act 1976

<sup>3</sup> Local Government Act 1976

In relation to the residential development, under Section 5 of the Town and Country Planning Act, a local authority is the local planning authority and thus the authority that approves and controls all planning and development applications in its area. Section 101(ee) of the Local Government Act relates to “the local authority shall have the power to divert, straighten, define and canalise the course of any stream, channel or watercourse”. Section 53(1) of Straits, Drainage and Building Act 1974 requires local authority to maintain and keep in repair watercourses under the control of the local authority. Section 70A Straits, Drainage and Building Act 1974 empowers the local council to order cessation of earth works where the safety of life or property is affected or is likely to be affected. By-law 8(3) and 17 Uniform Building By-Laws 1984 confer powers on local authority to disapprove building and structural plans submitted for its approval. By-law 10 of the Uniform Building By-Laws 1984 sets out requirement for building plans submitted to the local authority must contain complete lines of surface water discharge to the proposed drains. By-law 25(2) of the Uniform Building By-Laws requires that “all ... open spaces in and around buildings shall be suitably protected against soil erosion”.

Developments within local authority area are divided into residential, factories and commercial. There are several process involved in the development within local authority area. During planning and design stage of the development process, local authorities play important roles as approving authority. The grant of planning permission, building plan approval, and development order are all under the jurisdiction of local authorities. Local authorities also manage development process so as to ensure controlled and sustained development. This is achieved through preparation of development plans and development control guidelines that guide the development within local authority area.

This study will be looking at the aspect of liability of the local authority in the residential development. Experience shows that residential projects fail to deliver the required performance whereby in many cases the defects were found after the houses being occupied by the owner. The effect is bad for the project stakeholders, be it the project proponents, the project manager and the project team alike including the local authority as the planning approval body. Hence, a major responsibility of local authority in residential developments is to plan and enforce laws for managed residential development. For that purposes, the governing laws includes the Town and Country Planning Act, Local Government Act, Straits, Drainage and Building Act 1974 and Uniform Building By-Laws 1984.

One needs to understand the key factors governing successful and failure residential developments. It is known that the non compliance to local authority requirements both at design and construction stage by the construction players as a whole, shows their attitude towards quality. As a result, residential project although physically completed were not certified. Certificate of Fitness for Occupation (CFO) by the local authority cannot be issued for an example. Even if the CFO is to be issued, the defects on the houses are yet to be known by the buyers until months after the occupancy by the buyers.

The major step in the development approval process is the building plan approval coordinated by the Building Department in the local authority. In residential scheme, the original approved layout plan is redrawn to provide more precise and accurate details on building shape, location, set-backs from property lines, distances between buildings, and road reserves. Once the approval has been obtained, the developer must proceed to secure several other approvals from the local authority including approval for earthworks, roads and drains, landscaping and structural drawings.

Since the study is looking into the aspect of the responsibilities and liabilities of the local authority in connection with the residential development, the analysis will be on the liability of local authority based on the governing laws. To determine the liability of any party in the residential projects, there are several issues to be understood. The stages of the whole process of the project and the governing legislations should be well understood by all. These include the need to know the extent of the duty of care of one party on another to ascertain the liability of that party for any negligence made in the course of its duty.

Apart from the local authority, the analysis will be on the liability of the professionals namely engineers and architects. The professionals may give advice under a contract for reward, or without a contract, in pursuance of a voluntary assumption of responsibility, gratuitously without reward. In either case he is under one and the same duty to use reasonable care. For the local authority, the same thing applies, although without any contractual engagement, but due to the roles and functions stipulated in the governing legislations.

## **1.2 Statement of issue**

During the past ten years, the local authority has been heavily criticized for its performance, particularly in the residential development, involving the defects in the houses developed. The issues have been discussed openly in local newspapers and even among the politicians during their speeches in their formal functions.

The issues on the collapsed of the Highland Towers, the recent great flood of Shah Alam, the incident of earth collapsed in Hulu Klang and many others gave great impact to the integrity of the local authorities. A so called perfectly planned city has proven yet again that environmental disaster isn't far off when nature is tampered with.

These kind of incidents caused the increasing number of filing of cases in courts by the suffered parties to claim for damages for injury, economic losses and properties for an example, the Highland Towers case which went up the Federal Court level in order to determine who is to be blamed for the incidents and to whom the liability is to be imposed on. It is very noticeable that in almost all of the cases filed in courts, the local authority will be cited as one of the parties be it as the first, second or third defendant.

This study is therefore will be looking into the issue of whether in the exercise of their statutory functions of building control, the local authority is liable if the residential development is defective in quality or a source of economic loss. If so, to what extent the liability is and if it is otherwise, what gives the local authority such a special exception.

### **1.3 Objective**

The objective of this research is to determine the liability of local authority in connection with the residential development.

### **1.4 Scope and limitation**

The study focuses on the role, functions and responsibilities of the local authority under the Local Government Act (1976), Town and Country Planning Act (1976), Street, Drainage and Building (1974) and other associated legislation. Out of the roles, functions and responsibilities provided in these legislations, this dissertation tries to determine the extent of liability of the local authority in the residential development.

### **1.5 Methodology**

Research methodology will form the whole structure of the research (Poynter and John, 1993). It will be divided into a few stages.

- (a) Issue and statement of issue of this study will be collected through articles, journals, cases, books, newspapers and magazines.
- (b) The objective of this study will formed after the issue and problems had been identified.
- (c) Data collection stage. Data will be collected into two ways, which are documents and cases that brought to the court. In this study, documents such as journals, books, internet, articles, will be referred.
- (d) Analysis of cases collected from law reports and journals.

#### **1.6 Significance of research**

The research study was conducted in view of the increasing number of blames made against local authority on several aspect of development within its jurisdiction especially in the are of residential project. The Local Authority has always been burdened with the rising of claims, disputes and litigations. In most cases, Local Authority is said to be the responsible party in any of the defects of the buildings/houses built in its administrative areas.

In line with this issue, this research attempts to study the extent of liability of parties involved in the construction industry, with main focus on the residential development. In doing so, the research attempts to examine the stand of the

existing legislations and of the Courts on this issue to see the possibility of getting the conclusive answer on the liability of a specific body.

## **1.7 Organization of research**

Basically, this research study was divided into five chapters that covers introduction, the discussion on what is local authority and its roles and functions, the residential development, the theory of liability and the discussions on the supporting cases as regards to the liabilities and finally the conclusions and recommendations. The five chapters are briefly describes as follows:

### **1.7.1 Chapter 1 – Introduction**

This chapter presents the overall summary of the whole research study. It basically outlines the introduction, statement of issue, objective of the study, significance of the study, scope and limitation and methodology.

### **1.7.2 Chapter 2 – Local Authority**

This Chapter defines the local authority, its structures, organizations and establishment. It also discussed on the roles and functions of the local authority. In this Chapter also, the study is made on the relevant governing laws on the local authority and the relevant provisions in the legislations concerned. The related legislations are discussed in detail in order to determine the extent of the duties and responsibilities of the local authority. The emphasize will be given on the local authority's function on the building approval.

### **1.7.3 Chapter 3 - The Residential Development**

Under this Chapter, the discussion is made on the meaning of the residential development. In relation to this, the requirements to be fulfilled by the developer of the residential project are discussed especially in connection with the planning approval such as the requirements of the land acquisition, the land conversion, subdivision and other processes. The chapter also illustrates the steps of getting the approval from the relevant departments including the local authority. Some figures are shown in this chapters involving the flowchart of the planning approval process.

#### **1.7.4 Chapter 4 – The Theory of Liability**

This Chapter discusses on what is meant by liability. Theories of liability are found in many decided cases in Malaysia and also of the foreign jurisdictions such as United Kingdom. Lengthy discussion is made under this Chapter in order to see the relevancy and the connection between the liability of the local authority.

There is also a discussion on the extent of the duty of care of one party on another to ascertain the liability of that party for any negligence made in the cause of its duty.

#### **1.7.5 Chapter 5 – The Liability of Local Authority**

In this Chapter, the discussion on the decided cases is made in order to determine the liability of the local authority. The comparison is made between local cases and foreign cases accordingly.

#### **1.7.6 Chapter 6 - Conclusion**

This chapter summarized and analyzed the results of the discussion from the previous chapters. A conclusion and recommendations on the related issues are made accordingly.

## **CHAPTER 2**

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### *Local Authority*

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