Rescuing Dreams, Reforming Cities: A Malaysia – Indonesia Legal Blueprint for Preventing Failed Housing Developments

Professor Dr Nuarrual Hilal Md Dahlan ACIS (CS), (CGP), CC

School of Law

Universiti Utara Malaysia

Abandoned Housing Projects in Malaysia

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Miekarta Meikarta, Cikarang, Bekasi Project (Mangkrak)

Bukit Sukamulya / Bumi Sukamulya Residence, Kabupaten Cianjur, Jawa Barat (Mangkrak)

Perumahan Palm Hill Abdi Residen Cilendek Bogor (Mangkrak)

Perumahan Grand Mutiara di kawasan Kedungrejo, Kecamatan Pakis, Malang (Mangkrak)

Dubai Pearl – Dubai, United Arab Emirates

Blue City (Al Madina A’Zarqa) – Al Sawaadi, Oman

OBJECTIVES

- To highlight and explain the **abandoned housing projects** in Malaysia and the **related laws**
- To elaborate on the **legal issues** of abandoned housing projects in Malaysia & Indonesia
- To suggest **legal reforms** ending the scourge of abandoned housing projects

Reasons and Causes

- Shortage of funds on the part of the developers
- **No mandatory build-then-sell (BTS) system of housing delivery**
- No mandatory housing development insurance
- No law governing the rehabilitation of abandoned housing projects
- Enforcement issues
- Profit maximisation, unreasonable investors' demands, and pressure from the Basel Accord.

The Consequences

- The purchasers cannot get the duly completed houses with CCC and titles.
- The abandoned housing projects will be stalled forever if no viable rehabilitation is found
- The purchasers have to suffer losses, grievances and sufferings, for example, need to pay their banks until settlement
- No compensation and damages given by the defaulting developers
- Legal actions may not be feasible. Developers run away, insolvent developers, too many complications

The Consequences

- Rehabilitation may not be possible – issues of inadequate funding, too many technical issues involving the land office, the planning authority, the building authority, the housing authority, insolvency issues & lender chargee
- Stalled building creates an ugly and unattractive urban landscape, attracting criminal activities
- Problems for demolition subject to the chargees' consent, proprietors' consent & no investors interested.

Rehabilitation of Abandoned Housing Projects

- Many challenges
- Funding issues
- No interested party to revive
- No cooperation from purchasers
- Issues with the land office, local planning authority, technical agencies, banks, creditors, and insolvency administration
- Misuse, abuse, misconduct, failure of the rehabilitating party to duly complete the projects
- No law governing rehabilitation legal provisions to protect the rights and interests of purchasers
- Purchasers to waive any demands before the rehabilitating party agrees to rehabilitate
- Legal actions, encumbrances, caveats, injunctions, etc
- Issue of CF and CCC, partial/temporary CF and CCC.

Issues in various stages & laws

- ✓ Land and Planning Laws
- ✓ Building and Housing Development Laws
- ✓ Corporate Insolvency and Islamic Home Finance Law

Issues in Land Law

- The National Land Code (Revised 2020)(Act 828)
- State Authority
- Land Authority
- Alienation of lands
- Soil investigation
- Unqualified and incompetent developers
- Section 108 NLC – superiority of the land authority over planning authority & technical agencies
- Land offices – Land Administrator, Registrar of Land Titles

Issues in Land Law

- ✓ No obligation to provide big data, artificial intelligence (AI) insight and data analytics – land authority, planning authority and the technical agencies
- ✓ Liability of land authority – public interest, public welfare, negligence, reckless, irresponsible acts, fiduciary duty, procedural and substantive legitimate expectation to act fairly & reasonably
- ✓ Unsuitable land location – soil erosion, soil settlement, landslides, hilly or flat lands with hard rocks, rugged rocks and granites, geotechnical problems.

Suggestions for reforms in Land Law

- The decision-making process of the land authority should be subject to the planning authority and technical agencies' feedback and advice.
- Section 108 NLC – land authority must be subject to the planning authority and technical agencies
- Recent cases, *Perbadanan Pengurusan Sunrise* & *Visamaya* the land authority, subject to the planning authority conditions and restrictions
- Must follow Development Plan (structure and local plans)
- Public participation in the proposal to alienate land. Follow NSW practice.

Issues in Planning Law

- Town and Country Planning Act 1976 (Act 172)
- Federal Territory (Planning) Act 1982 (Act 267)
- Town and Country Ordinance (Sabah Cap 141)
- Sarawak Land Code (Cap 81)

Issues in Planning Law

- All planning policies of the federal government must be approved by the state authority.
- Non-coordination between the state and federal authorities
- List III of the concurrent List of the 9th Schedule to the FC.

Issues in Planning Law

- Inadequate Development Plan
- Superiority of the Planning Authority over the technical agencies
- Inadequate advice and comment from the technical agencies. No big data, no data analytics, AI.
- Unfair conditions of the planning permission
- Superiority of the state and land authority over the planning authority
- Development Plan is not mandatory
- Developer does not comply with the planning permission conditions

JKR KEDAH

JABATAN PENGAIRAN DAN SALIRAN MALAYSIA

Liability of the Planning Authority

- No immunity for any negligence, failure to comply with legal duties, disregard justice and equity.
- Failure to comply with the advice of the technical agencies.

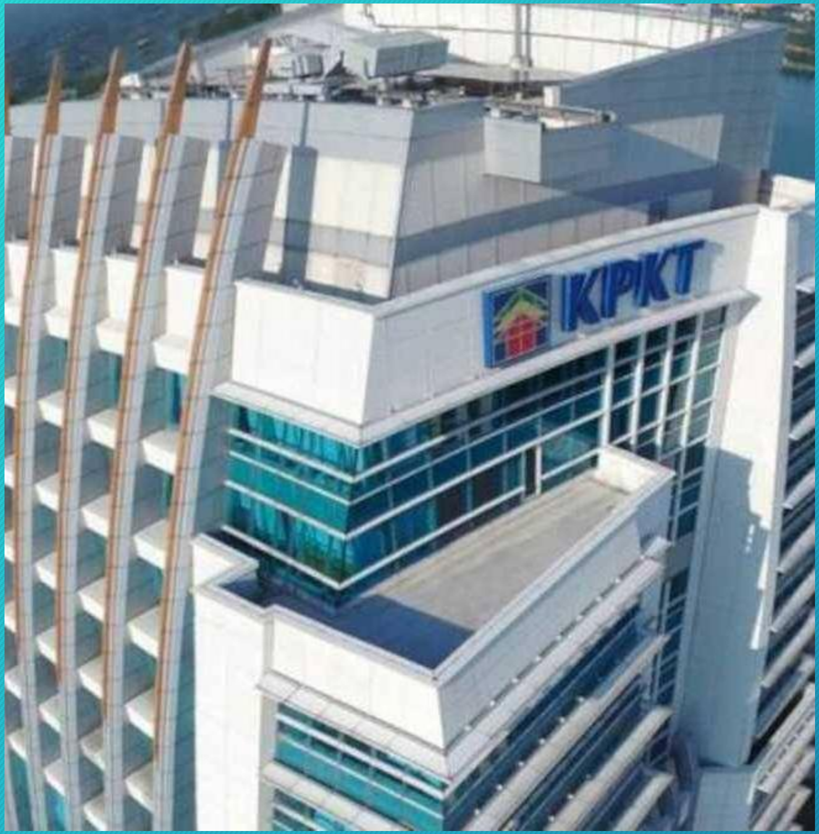
Suggestions for reforms in the planning law

- Requires coordination between the land authority, planning authority, federal authority and technical agencies.
- Obligation to update big data and data analytics, and use AI – suitability of land, issues and measures to address.
- Development plan should be mandatory – section 22 TCPA (DP not mandatory).
- The development plan should be detailed and comprehensive, requiring a detailed legal procedure to ensure its comprehensiveness and adaptability to current challenges. Must be regularly updated and be able to cater for the current needs, challenges, and issues

Building and Housing Development Laws

- Street, Drainage and Building Act 1974 (Act 133)
- Uniform Building By-Laws 1984
- Sabah Buildings Ordinance 1951 (Cap 123)
- Sabah Uniform Building By-laws 2022
- Sarawak Buildings Ordinance 1994 (Cap. 8)
- Sarawak Building By-laws
- Housing Development (Control and Licensing) Act 1966 (Act 118)
- Sabah & Sarawak Housing Statutes

Building and Housing Development Authorities



- Majlis Perbandaran
- Dewan Bandaraya Kuala Lumpur
- Kementerian Perumahan dan Kerajaan Tempatan (KPKT)

Housing Development Laws

- ✓ Certificate of Fitness for Occupation (CF)
- ✓ Certificate of Completion and Compliance (CCC)
- ✓ Approved Building Plan
- ✓ Housing Developer's Licence
- ✓ Duties and responsibilities as housing developer
- ✓ Sustainable land and housing development
- ✓ Defect Liability Period
- ✓ Late Delivery Damages
- ✓ Statutory formatted sale and purchase agreements – Schedules G, H, I and J

Issues in Building Law

- Uncertainty and variations of the conditions and requirements of the approved building plan.
- Failure to comply with the provisions under the UBBL and the SDBA.
- Inadequate enforcement of the SDBA and UBBL by the local authority
- Immunity of the state authority and LA under section 95(2) SDBA
- No mandatory legal provisions that require the LA to carry out reasonable supervision, verification and inspection of the building works
- Inadequate trained staff and administrative logistics and facilities

Issues in Building Law

- Qualified persons
- Principal Submitting Persons (PSP)
- Professional Architect
- Professional Engineer
- Registered Building Draughtsman
- Certificate of Fitness for Occupation (CF)
- Certificate of Completion and Compliance (CCC)
- Approved building plan
- Technical agencies
- Highland Towers case
- Gas explosion at Putra Height?

Suggestions for Reforms in Building Law

- The Local Authority should conduct inspection and verification of the building works.
- Support by inspection and verification of the Housing Controller
- To prevent fraudulent certifications by the qualified persons (PSP, architect, engineer & Registered Building Draughtsman)
- Repeal immunity of the local authority and state authority for any breach of legal duty, negligence and mala fide acts.

Issues in Housing Development Law

- Blatant disregard of the law by housing developers and no enforcement, and ineffective enforcement by the regulatory body, KPKT.
- Lack of mandatory requirement for housing development insurance by developers
- No mandatory build, then sell ("BTS") system for housing delivery.
- No specific legal provisions governing the rehabilitation of abandoned housing projects.

Suggestions for Reforms in Housing Development Law

- Increase the number of enforcement officers, providing them with training, and establishing branches of KPKT throughout Peninsular Malaysia in every district where housing development projects are actively carried out
- Impose Housing development insurance
- To prevent fraud, the Housing Controller, relevant technical agencies and the local authority should supervise and inspect, reasonably, the housing and building works of the developers
- Incorporate special rehabilitation legal provisions into Act 118
- Establish a full build-then-sell (BTS) model in housing delivery in Malaysia to prevent any occurrences of abandoned housing projects, to ensure protection of the constitutional and human rights of the public purchasers

Corporate Insolvency & Islamic Home Finance

- Companies Act 2016 (Act 777)
- Creditors – debtor – insolvency administrations – liquidation – receivership – Judicial Management – Corporate Voluntary Arrangement – Scheme of Arrangement
- **Priority of payment – dominance of creditors**
- Islamic Financial Services Act 2013 (Act 759)
- Central Bank Act 2009 (Act 701)
- Financing facility – Bay Bithaman al-Ajil (BBA) – Musharakah Mutanaqisah – Commodity Murabahah – Tawarruq Murabahah – Ijarah Mausufah bi Zimmah – Ijarah Muntahiyah bi al-Tamlik
- Riba’ (usury) – gharar – gambling – justice & fairness – fraud

Issues in Corporate Insolvency Law

- Secured creditor – unsecured creditor – preferential creditor
- Secured creditor – fixed chargee creditor – floating chargee creditor
- Unsecured creditors – suppliers – landlords – service providers
- Preferential creditors – unpaid employees – EPF – SOCSO-EIS-IRB-Royal Customs
- Liquidation will be subject to the supervision of the court, the committee of inspection, contributories (shareholders & members), and creditors
- Purchasers are unsecured creditors
- Liquidator responsibility
- Is the liquidator responsible for rehabilitating abandoned housing projects?

Issues in Corporate Insolvency Law

- Creditor priority – creditor-centric – purchasers can be neglected as unsecured creditors
- Shortage of funds (balance HDA & priority of claims)
- The court has inherent power to protect the rights of purchasers
- Bona fide purchasers for value without notice buying assets in insolvency administration
- But in New Zealand & Australia, an equitable lien over the land bought by purchasers

Issues in Receivership

- Debenture holders – secured creditors
- Deed of debenture
- Default of the borrower/debtor housing developer company
- Appointment of receiver and manager
- Shortage of funds
- Rehabilitation and protection of purchasers subject to the consent of the R&M and the debenture holder, viability of the rehabilitation, and rights and interests of debenture holders protected
- Abuse and misuse of the R&M during rehabilitation affect the rights of purchasers
- Lack of technical knowledge and experience of R&M

Issues in Scheme of Arrangement (SoA)

- SoA – arrangement – compromise – contract between creditor and developer to settle debts
- SoA binds all creditors, the company, liquidator, contributories.
- Requires 75% or such a percentage agreed by court to establish SoA
- Appointment of SoA Director
- Moratorium period – restraining order
- Shortage of funds for rehabilitation
- Abuse and misuse of SoA Director & debtor company in the rehabilitation or leading to no rehabilitation
- Lack of knowledge of the SoA Director
- Superiority of the creditors
- 3 months only, subject to extension

Issues in Judicial Management (JM)

- The court appoints a Judicial Manager on the application of the creditors
- Qualified insolvency practitioner
- Empowered by moratorium power
- To revive the company and settle the debts
- 6 months or on an extended period up to 1 year
- Binds all types of creditors
- Inadequate funds
- Purchasers' rights can be marginalized, subject to the JM and the creditors' wishes
- Moratorium power shields against any action by purchasers
- JM – lack of expertise

Corporate Voluntary Arrangement (CVA)

- ✓ A quick rescue for debt restructuring
- ✓ An arrangement between the debtor company and creditors to establish a CVA
- ✓ Requires consent of 75% of creditors
- ✓ 28 days duration only
- ✓ An extension of 60 days may be given on approval of the member and 75% of creditors
- ✓ Requires the court’s sanction
- ✓ CVA not applicable to public companies, financial service companies, capital market companies, and chargor companies.
- ✓ Only applicable to private company
- ✓ Who may apply for CVA – OR, company director, judicial manager or liquidator
- ✓ Purchasers’ rights may be marginalised in the CVA, subject to the consent of 75% of creditors and adequate funds

Suggestions for reforms in the Insolvency Law

- Special regulation governing rehabilitation of abandoned housing project in the Housing Development (Control & Licensing) Act 1966 (Act 118)
- Impose mandatory housing development insurance on applicant housing developers

Islamic Home Finance

- Islam prohibits riba' (usury), gharar, injustice, gambling and fraud in transaction
- Islamic Financial Services Act 2013 (Act 759)
- Central Bank of Malaysia Act 2009 (Act 701)
- Bank Negara Malaysia
- Islamic banks
- Shariah Advisory Committee (SAC)
- Shariah Committee (SC)

Islamic Home Finance

- Generally Islamic Home Finance products do not protect the rights of purchasers in abandoned housing projects
- Bay' Bithaman al-Ajil (BBA)
- Commodity Murabahah (CM)
- Tawarruq Murabahah (TM)
- Ijarah Mausufah bi Zimmah (IMBZ)
- Ijarah Muntahiyah bi al-Tamlik (IMBT)
- Al-ghunmu bi al-ghurmi
- Bay' al-Inah
- Basel Accord & Investors' demands

Islamic Home Finance

- Pending completion of housing units/incomplete
- Completed housing units
- Gharar
- Imbalance between the interests of the bank and the borrower
- Unfair contract terms
- Unconstitutional, against human rights & Islamic Law. Federal Constitution?

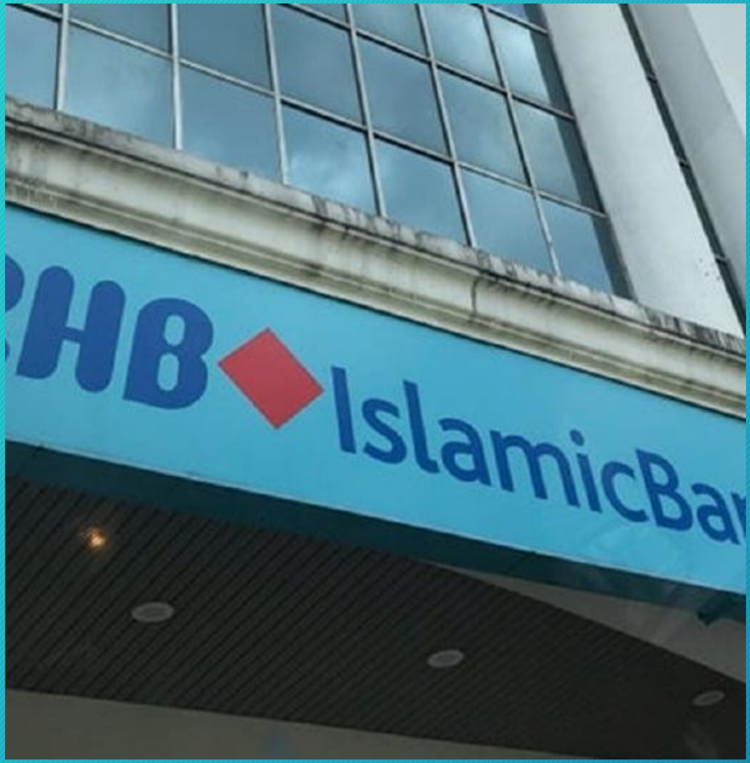
Islamic Home Finance BBA Issues

- Imbalance terms and conditions
- Against the principle of *al-ghunmu bi al-ghurmi*
- *Gharar*
- Incomplete housing units/pending completion
- Complete housing units with CCC & title
- No housing development insurance/Takaful
- Defaulting purchasers may be subject to legal actions, including bankruptcy & execution proceedings
- No protective terms and conditions to purchasers
- No verification, cross-checks for payment release and site visits by banks
- Banks are not responsible for rehabilitation, paying compensation, or protecting the client purchasers
- Bay al-Inah

Islamic Home Finance *Commodity Murabahah* & *Tawarruq Murabahah* Issues

- No terms in CM or TM that protect purchasers in abandoned housing projects
- No housing development insurance/Takaful
- No liability to rehabilitate
- Profit margin is higher, burdening the purchasers
- Absolve the liability of the bank to rehabilitate and protect the rights of purchasers in the event of abandonment

Islamic Home Finance *Musharakah Mutanaqisah* Issues



- In abandoned housing project, it is unclear what the liability of the bank is as a co-owner of the housing units
- It is also unclear when abandonment occurs; the developer needs to refund all payments made by the bank
- Nonetheless, if there is an event to lead to the purchaser being unable to obtain and occupy the unit, the bank will refund all lease payments made
- No liability of the bank to rehabilitate nor to pay compensation to purchasers in abandonment
- It is suggested that MM should only be applicable to duly completed units with CCC and a title

Islamic Home Finance *Ijarah Mausufah Bi Zimmah & Ijarah Muntahiya bi al-Tamlik* Issues

- ✓ Both the bank and the purchasers will suffer losses if abandonment occurs.
- ✓ Purchasers – lost the deposits
- ✓ The bank lost the progressive payment made to the developer without getting the duly completed houses
- ✓ No protection to purchasers if abandonment occurred
- ✓ Should the bank and the purchaser sue the developer? Unclear
- ✓ But the bank will reimburse all lease payments to the purchasers if CCC cannot be obtained.
- ✓ Protection to the bank and purchasers is still unclear

Suggestions for reforms in the Islamic Home Finance Law

- ✓ Islamic Home Finance products only applicable to duly completed houses with CCC and titles are ready
- ✓ If this cannot be applied, Islamic banks must imposed the developer to provide Housing Development Insurance
- ✓ SAC and SC must comprise consumer representatives – PPIM, CAP, FOMCA, HBA

New Development in Malaysia – Digital system by KPKT

- **eSPA** — the contractual/data-entry gate: captures purchaser and contractual information
- **HDA** — the financial-control layer: controls and traces project money
- **Housing Integrated Management System (HIMS)** - the central monitoring and early-warning engine: physical/financial indicators deteriorate → HIMS detects divergence → regulator intervenes before abandonment: combines financial + physical + regulatory indicators
- **TEDUH** — the purchaser-facing transparency layer: Is the developer licensed? Is the project properly registered? What is its progress? Is it already classified as problematic? Communicates relevant status to purchasers/public

New Development in Malaysia

- **Proposed RPDA** — Real Property Development Act / Akta Pemajuan Harta Tanah: The proposed law is expected to modernise the regulatory framework, strengthen purchaser protection, extend regulation beyond conventional residential developments, and accommodate newer development and tenure models
- **Proposed OTP** — Option to Purchase: project launch → OTP stage → test real purchaser demand → insufficient demand identified early → project can be reconsidered before major financial exposure → deposits returned according to the statutory mechanism
- DRN 2026–2035 — Dasar Perumahan Negara: to establish **big data in 2027** - a big-data housing platform integrating information from KPKT, state governments, local authorities and locality-level sources. The aim is to improve feasibility studies and match housing type, location, price, demand and affordability.

Indonesia

- **UU No. 1 Tahun 2011 tentang Perumahan dan Kawasan Permukiman**, as amended, including through the Cipta Kerja framework. It regulates housing development, developer obligations, purchaser rights, dispute resolution, administrative sanctions and criminal offences.
- Apartments or strata developments: **UU No. 20 Tahun 2011 tentang Rumah Susun**, supplemented by **PP No. 13 Tahun 2021**
- **Perjanjian Pendahuluan Jual Beli (PPJB)**—the preliminary sale and purchase agreement used before final transfer.
- **PP No. 12 Tahun 2021**: a developer **must satisfy specified prerequisites before PPJB**, including certainty concerning land status, the object being sold, building approval/ Persetujuan Bangunan Gedung, Prasarana, Sarana dan Utilitas Umum, and a minimum construction threshold.

Indonesia

- **UU No. 8 Tahun 1999 tentang Perlindungan Konsumen** provides general consumer rights and remedies. Housing purchasers are therefore not protected solely through housing legislation; they are also consumers entitled to protection against misleading representations, non-performance and other unlawful practices.
- **UU No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang**

Weaknesses in the Indonesia Law

- **The PPJB threshold still leaves substantial completion risk** after the purchaser becomes committed.
- **Does not have a purchaser-facing statutory mechanism equivalent to Malaysia's Housing Development Account (HDA)** that comprehensively ring-fences purchaser money and restricts withdrawals to project purposes.
- **The law does not identify a universal statutory completion guarantee, insurance or purchaser-benefiting performance bond** capable of financing unfinished works if the developer collapses.
- **Insolvency law** can convert purchasers from protected housing consumers into ordinary creditors fighting over an insufficient asset pool.
- **No clear protection for purchasers once a housing project is** abandoned.

Conclusion

- ✓ Mandatory “Full Build then Sell” (BTS)
- ✓ Only for housing developers – a consortium of housing developers with the government as the major shareholder, applying BTS akin to the Housing and Development Board of Singapore (HDB)
- ✓ If using Sell then Build (STB), it must impose Housing Development Insurance (HDI) + a special legal regime governing the rehabilitation of abandoned housing projects (SLRGR)
- ✓ Full enforcement by KPKT – opening up branches in all districts where housing development is carried out – cross-check, verification & inspection
- ✓ Islamic home finance – must avoid gharar, fair contract terms and be responsible – only use BTS or if STP, then HDI and the special law governing rehabilitation of abandoned housing projects must be incorporated

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