Turkish Online Journal of Qualitative Inquiry (TOJQI)
Volume 12, Issue 6, July, 2021: 9505 - 9511

Research Article

Sustainable Retirement Village: A Segment Ofexisting Legal Provisions In Malaysia

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Abstract

In this new millennium, the ageing population remains a global-phenomena that is destined to become a serious issue in emerging countries. Malaysia is an upper-middle-income country with a rapidly ageing population. Most of the time, elderly populations are related with family abandonment and loneliness. As Malaysia's population ages, retirees' needs for fellowship and social engagement, as well as access to support services and amenities, are becoming increasingly important. The development of sustainable retirement villages in Malaysia, which offer a "continuum-of-care" idea, is hampered by legislative obstacles. The Care Centres Act 1993, administered by the Ministry of Women, Family and Community Development, and the Private Healthcare Facilities and Services Act 1998, administered by the Ministry of Health, are two independent Acts. Both have jurisdiction and duplication over retirement villages. The Private Aged Healthcare and Services Act 2018 could relieve the duplication, but the Minister of Health has not enforced it into law. Even with this new legislation, clear standards and a regulatory framework are required to promote the formation of a viable and sustainable environment for interested and dedicated developers to engage in the development of retirement villages. Some of the challenges are outlined in the paper. The present study aimsto investigate several statutes which are applicable to the implementation of retirement homes in Malaysia namely the Private Healthcare Facilities and Services Act 1998 (Act 586), Private Elderly Care Facilities and Services Act 2018 (Act 802) and the Care Centres Act 1993 (Act 506). This study uses a qualitative approach by using the library method and documentation of the statutes to analyze the effectiveness of existing laws on the implementation of retirement homes in Malaysia.The findings shows that there areneeds for well-structured legal framework in Malaysia, for the sustainable development of ‘retirement village’ which will promotehealthy aging among the elderly and could be part of good choice of living for them.

Keywords: aging population, retirement, village, sustainable, legal framework

1. Introduction

Malaysia, as a developing country, will experience population ageing in the future, and may even attain the position of a "old" country sooner than developed countries. According to the United Nation (UN) forecast, Malaysia will be classified as an old country by 2030, when the population of people aged 60 and up accounts for 15% of the total population. Malaysia will become an old country by the 14th Malaysia Plan, according to the national development policy. In comparison to Sweden, Malaysia's old population will double in 28 years, from 7% to 14%. It took 112 years to reach this 'old' rank. The United Nations (UN) stipulates individuals 60 years of age and older are categorized as elderly. The decision made in Vienna, Austria in 1982 was also adopted by all ASEAN countries, including Malaysia. Among the factors that contribute towards the old country is the decrease in fertility rate and longer life expectancy with the average age for women is 77 years and men are 72 years. In fact, in this country, the doubling of the population aged 65 and above has increased by seven percent to 14 percent in 23 years compared to 50 to 100 years for developed countries. Without treating the old as a burden, all parties must find a method to meet the issues of an ageing population through more thorough planning, one of which is the comprehensive setup of a retirement village for the aged.

2. Methodology

In the study of ‘Sustainable Retirement Village: A Segment of Existing Legal Provisions in Malaysia’, its aim is to look in three different Acts that are overseen by two different ministries–which is under the Ministry of Women, Family and Community Development (the Care Centres Act 1993) and under the Ministry of Health (the Private Healthcare Facilities and Services Act 1998 and the Private Aged Healthcare and Services Act 2018).This study uses a qualitative approach by using the library method and documentation of the statutes to analyze the effectiveness of existing laws on the implementation of the sustainable development of ‘retirement village’ as it could be part of good option for the elderly in Malaysia.

3. Analysis And Discussion

The Definition and Concept of Retirement Village

There are several interpretations defining retirement village in the context of research studies and mass media press. Mohamad Naqiuddin Md Mansor and others (2016) define retirement village as a brand of urban development equipped with facilities specifically for senior citizens.Sri Seronok Retirement Village, Cheras is the first retirement village in Malaysia but does not meet the standard for a retirement home that can meet the needs facilities and facilities for the elderly (Mohamad Naqiuddin Md Mansor and others (2016).Xin Jean Lim and others (2019) see retirement village as a retirement home for the placement of senior citizens according to the guidelines that have been set taking account economic factors and environmental sustainability to influence buyers among senior citizens in Malaysia to retirement housing units.

In fact, this retirement village is also defined as a retirement village in accordance with the culture and customs of the elderly in Malaysia, namely retiring together with traditional activities, close to the flora and fauna, and away from the hustle and bustle of the city.Apart from that, the Ministry of Housing and Local Government through its subsidiary PRIMA is planning the construction of a retirement village model by meeting the basic elements needed by senior citizens to provide a harmonious environment with adequate health facilities for senior citizens (Norshahzura Mat Zuki, 2021).PRIMA is a low-cost housing project created by the PR1MA Act of 2012. Its goal is to design, develop, build, and manage high-quality housing in critical urban locations for middle-income families.

A retirement town is not always what it appears to be. A 'retirement village,' as defined by the Victorian Government's Retirement Villages Act 1986, is a community where:(www.consumer.vic.gov.au)

- majority of residents are 55 years old or older or have retired from full-time work (or are spouses or partners of such people).
- residents receive accommodation and services, that are not available in a residential care or elderly care facility, and

at least one of the residents, as a contractual condition of entering the retirement village, paid an ingoing contribution that was not rent. It makes no difference who made the payment or whether it was made in instalments or as a lump sum. (www.consumer.vic.gov.au)

If a community satisfies the legal criteria of a retirement village, the Retirement Villages Act 1986 protects all residents, regardless of whether they paid an ingoing contribution or whether they own or rent their unit. (www.consumer.vic.gov.au).

A ‘retirement village notice' must be filed with the Land Titles Office by the owner of land that will be utilized as a retirement community. This notification is registered on the land title, which can be checked at the

Land Office of the Victorian Government. Anyone who offers contracts that allowsomeone to become a resident of a retirement community without first filing this notification is breaking the law. (www.consumer.vic.gov.au).

Meanwhile, according to New Zealand legislation, under Section 6 of the Retirement Villages Act 2003provides as follows:(aut.researchgateway.ac.nz)

Means the part of any property, building, or other premises that contains 2 or more residential units that provide, or are intended to provide, residential accommodation together with services or facilities, or both, predominantly for persons in their retirement, or persons in their retirement and their spouses or partners, or both, and for which the residents pay, or agree to pay, a capital sum as consideration and regardless of whether– (a) (b) (c) (d) and (e) provisions of the Act must be read together which comprised of a resident's right of occupation,the form of the consideration for that right,the consideration is actually paid or agreed to be paid,the resident makes an additional payment or periodical payment, and onthe services or facilities. A retirement community contains any communal areas and facilities to which residents have access through their occupancy right agreements.

A retirement village is a residential complex where residents have agreed to either occupy the buildings or receive services from the complex's operator.Residents in retirement communities are primarily or entirely over 55 years old or have retired from full-time employment.Hundreds of retirement villages of all sizes and designs exist in NSW, each with its own set of services and amenities. Retirement villages are administered by private operators as well as community organisations such as churches and charities.There is a wide choice of retirement village accommodations to choose from, including: (www.fairtrading.nsw.gov.au)

• self-contained premises available to residents who are able to live independently

• serviced premises (or assisted living apartments), with meals, cleaning and other services

• a mix of self-contained and serviced premises, allowing residents to transfer if the need arises. Some retirement villages, although not all, offer optional support services.Residents should inquire about the standard, scope, and pricing of optional services available at the village from each operator.

Section 3(1) of the Retirement Villages Act 1992 (Western Australia Legislation) defines a 'Retirement Village' to mean: (www.legislation.wa.gov.au)

"retirement village" means a complex of residential premises, whether or not including hostel units, and appurtenant land, occupied or intended for occupation under a retirement village scheme or used or intended to be used for or in connection with a retirement village scheme;

Further, the term 'retirement village scheme' is defined under the same Act to mean: (Retirement Villages Act 1992 Section 3(1) as follows:

"retirement village scheme" or "scheme" means a scheme established for retired persons or predominantly for retired persons, under which - (a) residential premises are occupied in pursuance of a residential tenancy agreement or any other lease or licence; (b) a right to occupation of residential premises is conferred by ownership of shares; (c) residential premises are purchased from the administering body subject to a right or option of repurchase; (d) residential premises are purchased subject to conditions restricting the subsequent disposal of the premises; or (e) residential premises are occupied under any other scheme or arrangement prescribed for the purposes of this definition, but does not include any such scheme under which no resident or prospective resident of residential premises pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme;

Cheng Seng Kok and Joseph Chong (2018) in the study finds that the real 'retirement village' is made up of a grouping of private residences designed specifically for the elderly.To cater to the needs of the senior citizens, this type of residence offers amenities and services such as 24-hour assistance, catering, and home maintenance, and regular activity arrangements to improve and maintain the well-being of the elderly (Cheng Seng Kok and Joseph Chong (2018). Usually, the image of a 'retirement village' is like a community in a large resort with a wide landscape. However, 'retirement village' in Malaysia is similar as a prestigious condominium in New Zealand, Australia and other developed countries. However, a study by Azlina Md Yassin, HaidalizaMasram and Ong Suet Khim (2018) found that there are still many senior citizens who do not know about the existence of retirement homes or retirement villages in Malaysia.

4. Legal Provisions Related To Retirement Village In Malaysia

A. The Care Centres Act 1993 (Under the Ministry of Women, Family and Community Development).

This Act is intended to create a provision for the registration of inspections and enforcement on care centres, as well as related matters, to ensure that residents' welfare, well-being, and safety are prioritised (Department of Social Welfare, 2020).This Act is general in nature and is a reference to various social services to meet the needs in terms of protection and training services to certain groups such as people with disabilities (OKU), the elderly who are poor, children who are abandoned, adolescents who are vulnerable to moral damage and to family members affected by various social problems.

Today the care centres, shelters and related institutions are not only managed by government bodies, but also individuals or non-governmental organizations (NGOs). The companies with awareness and empathy also open their own care or protection centers either by providing services free to the needy with the help of public donation financing, zakat, baitulmal, government bodies or by charging payment as one of their income and career.

As a result, this Act is held as a quality care control to ensure that the occupants of residential and daily care centers receive perfect care and protection, especially in terms of nutrition, accommodation, health care and daily activities while in the care center.The Social Welfare Officer is gazetted to implement this Act based on the Care CentreRegulations 1994 through supervision and conducting investigations on registered care centers.

B. The Private Healthcare Facilities and Services Act 1998 (Under The Ministry of Health)

Act 586 came into force on 1 May 2006 replacing the Private Hospitals Act 1971.The Act aims to regulate not only private healthcare facilities and services such as private hospitals, private clinics, private hemodialysis centres, and other private healthcare facilities, but also health-related facilities and services such as Managed Care Organizations (MCOs), as well as matters related to them.Other types of facilities that will be licensed will also increase from time to time according to the type of private facilities that will be gazetted such as private ambulance services, homecare nursing, stem cell banking and so on.Act 586, in general, governs and regulates private and other healthcare institutions and services.

The focus of Act 586 at the beginning of implementation is to ensure that all private dental clinics and other private medical clinics are registered. In addition, the other types of private healthcare facilities including hospitals, hemodialysis centers and so on need to have approval set up and license to operate. In addition, the Managed Care Organization (MCO) needs to submit information to the Ministry of Health Malaysia and be registered in the MCO Register.

There are 5 parts of the implementation and enforcement of Act 586 in matters of registration and licensing of private healthcare facilities and services as follows: (Official Website of the Medical Practice Division, 2021).

First, ‘Zoning’ which is to ensure that the relevant requirements are taken into accounts; and

Second, infrastructure; and

Third, the process which involves the following:

(a) policies, procedures and procedures for operating standards, manuals, records, etc. according to the type of healthcare facilities and services provided including in terms of documentation, implementation and effectiveness,

(b) the establishment of ‘Medical and Dental Advisory Committee’ or the like, visiting board members, the role of responsible person according to discipline etc.,

(c) compliance with welfare and social needs, procedures for handling patient dissatisfaction etc.,

(d) handling of complaints and enforcement activities, the fourth 'Outcome' by reporting incidents or 'incident reporting', notifications, determination of death, e-reports and complaints including overcharging and the effects of enforcement activities; and lastly, ensuring that license details are updated in compliance with relevant procedures.

C. The Private Aged Healthcare Facilities and Services Act 2018 (Under the Ministry of Health)

In November 2017, Act 802 was passed by Parliament and gazetted on March 29, 2018.The Act aims to regulate private aged care institutions throughout the state and set minimum standards for senior center facilities and services for senior citizens as most of the senior care services and care centers are not registered with any agency (BH Online, 2018).Next is due to the existence of service centers and care for the elderly who start charging service to prospective residents before they reach retirement age (Bernama, 2017).In addition, this act touches on the requirements of a premise to be licensed, the qualifications of registered employees, the mechanism of making complaints and the needs of premises that prioritize safety (Utusan Borneo, 2019).

Ultimately, the main purpose of Act 802 is to ensure that all care centers that provide private senior care services are licensed so that these care centers are operated at a quality level, including ensuring that appropriate standards of care are implemented, or staff are trained and competent in addition to conducting more monitoring and enforcement comprehensive.In addition, this Act sets out standards for the services of facilities and personnel care for the elderly that must be complied with by private care centers for the elderly (Fourteenth Parliament, Third Term, Third Meeting, 2020).

5. The Analysis Of Legal Provisions

Private nursing homes are controlled by the Ministry of Health under the Private Healthcare Facilities and Services Act 1998, whereas the Senior Citizens Care Centre is still under the jurisdiction of the Social Welfare Department until Act 802 is implemented (Act 586).Judging from section 53 of Act 802, existing senior care centers registered under the Care Centres Act 1993 are deemed to be licensed under Act 802 for up to five years for the effective date of this act (Fourteenth Parliament, Third Term, Third Meeting, 2020).

Malaysia needs a conducive ecosystem to address the challenges of aging. One of the elements of the ecosystem that is often overlooked is the integrated ‘retirement village’.Based on data from PLANMalaysia, Department of Town and Country Planning Peninsular Malaysia, Malaysia only had four ‘retirement villages’ in 2017 compared to senior citizens in New Zealand who live in ‘retirement villages’ which is more than 12.4% aged 75 years and above.This is due to the lack of policies and laws as well as guidelines that emphasize ‘retirement village’ in Malaysia.

The care home is usually filled with abandoned orphans, many semi-healthy seniors who still enjoy a healthy lifestyle will not choose to live in the care home. Therefore, it becomes a necessity for the retirement village to meet the needs of senior citizens in meeting the demand of the housing market gap.

Development projects such as in Mont’Kiara Sophia and AraGreens by providing medical, nursing and healthcare services show a need for ‘retirement village’ marketing even to the elderly who will be weak and bedridden.In Malaysia, the development of ‘retirement village’ offers the concept of a complete but limited care package due to existing laws. As explained through the applicable Acts, the Care Centres Act 1993 (Act 506), administered by the Ministry of Women and Community Development, and the Private Healthcare Facilities and Services Act 1998 (Act 586), administered by the Ministry of Health, were both amended. These two Acts overlap in the implementation of ‘retirement village’ development.

In this regard, the Private Elderly Healthcare Facilities and Services Act 2018 has been enacted but is not yet in force under the Ministry of Health.In addition, there must be a clear guide and legal framework in facilitating the development of a suitable and continuous ecosystem to housing developers who are interested and committed in realizing the development of ‘retirement village’.As the globe changes, Malaysia is becoming more like other developed countries, where the ratio of residences designed to satisfy the needs of the elderly to live and be cared for is increasing (Syed Mustafa et al., 2005).

‘Retirement village’ will benefit from a unique administration in terms of property ownership and management. But the challenge is the ownership of the strata proprietary model is not optimal.To preserve additional sub-sales or employment in the ‘retirement village' unit and permit future redevelopment, a developer is likely to keep the whole ownership of the ‘retirement village.'Therefore, developers are likely to be interested in selling ‘retirement village’ in the form of a lease for 30 years with automatic renewal for another 30 years.

A reverse mortgage system or a third-party charge can be implemented if the bank does not allow financing due to limitations in the ownership rights and age of the buyer.There is a need in the management of life arrangements if this pawn model is adapted as in Australia and other developed countries to make it easier for ‘retirement village’ operators to control exit and entry rules as well as provide facilities and services in a more organized manner.Because of the potential separation between developer and operator, such a framework should be explored.This is because developers may want to collaborate with hoteliers or healthcare organisations that have greater experience in the field. Although the Private Aged Healthcare Facilities and Services Act 2018 has come into force, it still does not provide a framework like this. Administrative legislation from Australia and New Zealand can be used as a reference in the implementation of this framework.

Because of the ongoing operating and maintenance costs of providing services and facilities to the elderly throughout their lives, ‘retirement village' gives lower yearly returns and longer repayment periods for investors. Therefore, the government needs to enact a simple and predictable law to convince investors.If Act 802 becomes a comprehensive law in managing and administering 'retirement village', then the law should be comprehensive and not limited to managing and administering, but also a set of guidelines for health, planning and safety, and development, in addition for the protection of the consumer to avoid any additional application of other laws.

The next challenge is the tax structure such as long-term rental income. If the developer is unable to obtain a construction expense deduction, the tax on gross income will be implemented instead of profit. The solution to this problem is for ‘retirement village’ be categorized as a resort, asit will be eligible for the Investment Tax Allowance. (ITA) and Industrial Building Allowance (IBA).However, if there are foreigners who want to move to the ‘retirement village’, and if the ‘retirement community' is classified as a tourist destination with more than three stars, they must pay a RM10 tourism tax.Therefore, the government needs to set aside the tourism tax conditions in the ‘retirement village’ (Cheng Seng Kok and Joseph Chong, 2018).

The Ministry of Urban Wellbeing, Housing and Local Government is in the process of introducing a new law, namely the Retirement Village Act (RUU) of the National Housing Corporation Bill to provide control and licensing for the 'retirement village' development business and protect the interests of buyers from among the elderly and includes planning, construction, building management and residential ownership to ensure the retirement village is safe, have a quality and affordable for the elderly.This is due to the Care Centre Act 1993 (Act 506) and the Private Elderly Healthcare Facilities and Services Act 2018 (Act 802) do not include comprehensive retirement village construction guidelines such as consumer ergonomic capabilities including senior friendly elements (Jason Thomas, 2020).

6. Conclusion

Housing, health, and care, as well as support for the aged, must all be provided and established. In particular, the three main parties in charge of Malaysia's elderly homes must never lose sight of the homes' primary aim, which is to preserve the elderly's needs and requirements. The findings show that the retirement homes have become a necessity in Malaysia due to the increase in senior citizens, as by year 2030, Malaysia is expected to become the ‘Old Country’ when 15% of the total Malaysianis senior citizens. This is due to the drastic increase in the percentage of senior citizens in Malaysia every year. If the legal framework is well structured and enacted, ‘retirement village’ will produce healthy aging among the elderly with the encouragement of an independent, active lifestyle and ensure the social involvement of the elderly while ensuring safety and healthy eating is not neglected.In addition, creating public facilities to facilitate senior citizens to stay in touch with the community and workplace without any risk and burden and the lifestyle changes by retirees from homes consisting of family members to a smaller unit in the ‘retirement village’ will stimulate activities of the elderly and to open greater opportunities for health to new families in local housing. Even ‘retirement village’ can open-up new employment, entrepreneurship opportunities and stimulate the property market activities. Most importantly the ‘retirement village’ could be part of good option for the elderly..

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