

## CONSUMERS' BASIC RIGHT TO HOUSING: THE ROLE OF INSTITUTIONAL FRAMEWORKS IN MALAYSIA



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### ABSTRACT

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There are eight consumers' rights and one of them is the right to basic needs. The right to basic needs encompasses, inter alia the right to housing. There are several international documents which recognize the consumers' right to housing. In upholding the consumers' right to housing in Malaysia, the main institutional framework which is responsible in providing houses to the consumers is the Ministry of Urban Wellbeing, Housing and Local Government. This Ministry is assisted by other institutions such as, Department of Housing, 1Malaysia PRIMA Corporation and National Housing Company Limited, together with private sectors. The objectives of this paper are to analyze the international documents which acknowledge the consumers' right to housing, the roles of the institutional frameworks and the challenges they face in providing houses to the consumers. The findings of the research show that the consumers' basic right to housing has been recognized internationally and various programs have been implemented by the Ministry of Urban Wellbeing, Housing and Local Government and related institutions to uphold the consumers' basic right to housing. However, there are challenges that need to be faced by the Ministry of Urban Wellbeing, Housing and Local Government and related institutions, such as, the difficulty to fulfill the demand due to very limited affordable houses can be built at the urban areas. It is suggested that, apart from implementing affordable homes and citizen friendly homes programs, the Government needs to take other measures, such as, controlling the price of the houses and the insertion of stringent conditions in the National Housing Policy regarding the purchasing of the second and subsequent houses.

**Contribution/ Originality:** This study contributes in the existing literature on consumer protection, particularly, consumer's right to housing. The articles on consumer's right to housing is very limited. Not many studies have been done on consumer's right to housing, especially from Malaysian perspective. It is hoped that this article may contribute to the existing literature on consumer's right to housing.

## 1. INTRODUCTION

Every consumer is granted with eight basic rights, namely, right to basic needs, right to safety, right to information, right to choose, right to redress, right to give opinion, right to consumer education and right to live in healthy environment. Nevertheless in Malaysia, these rights are neither explicitly codified in the Consumer Protection Act 1999 nor in any other statutes. However, these rights are taken care by particular institutions. The Ministry of Domestic Trade, Cooperatives and Consumerism is entrusted with the tasks to take care the consumer's basic right to information, education and redress. The Ministry of Information, Communication and Culture is also entrusted to uphold consumers' right to information. Meanwhile, the Ministry of Health is entrusted to uphold the consumers' right to safety, particularly, food and medicines. The consumers' right to basic needs in relation to housing is the responsibility of the Ministry of Housing and Local Government. The Ministry of Natural Resources and Environment plays an important role in ensuring the consumer's right to live in healthy environment. The institutional frameworks in Malaysia show that many ministries involved in upholding the consumers' rights. The focus of this article is on the consumers' right to housing.

## 2. CONSUMERS' BASIC RIGHT TO HOUSING

Housing is a basic need to every consumer. Housing is a shelter to consumers. The consumers' basic right to housing is included as one of the fundamental rights of the consumers, beside food, water and clothing.<sup>1</sup>

Consumers' basic right to housing is a human right which is the right of every woman, man, young person and child to get a house which is safe and secured for them to live peacefully with dignity.<sup>2</sup> According to Eide (2006) the right to housing is a social right. However, there is an opinion which considers the right to housing as one of the economic, social and cultural rights.<sup>3</sup> Gewirth (1984) is of the opinion that the right to housing is based on the recognition of human beings as human beings. Various international documents have acknowledged the right to housing, such as, the Universal Declaration of Human Rights of 1948 (UDHR), the International Convention on the Eliminating of All Forms of Racial Discrimination of 1965 and the International Covenant to Economic, Social and Cultural Rights of 1966 (ICESCR)

## 3. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS OF 1948 (UDHR)

Article 25(1) of the UDHR states that:

Everyone has the right to an adequate standard of living for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>4</sup>

In article 25, housing is explicitly included as an aspect of the right to an adequate standard of living. Many of subsequent legal texts include the right to housing as a right to an adequate standard of living, often worded very closely to article 25(1) of the UDHR (Hohmann, 2013).

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<sup>1</sup> <http://www.ask.com/question/what-do-humans-need-to-survive>

<sup>2</sup> <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

<sup>3</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CM>

<sup>4</sup> <http://www.un.org/en/documents/udhr/index.shtml#a25>

#### 4. THE INTERNATIONAL CONVENTION ON THE ELIMINATING OF ALL FORMS OF RACIAL DISCRIMINATION OF 1965

Article 5 has made it mandatory to every country “to prohibit and eliminate racial discrimination in all of its form and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to quality before the law, notably in the enjoyment of...(e)...(iii) the right to housing”.<sup>5</sup>

#### 5. THE INTERNATIONAL COVENANT TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS OF 1966 (ICESCR)

Article 11(1) provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”.<sup>6</sup>

Article 11(1) clearly reflects the structure and content of article 25(1) of the UDHR. Both provisions include housing along with food and clothing as aspects of the right to an adequate standard of living (Hohmann, 2013).

On the other hand, Office of the High Commissioner for Human Rights has issued (Commission on Human Rights Resolution, 2004) entitled Adequate Housing as a Component of the Right to Adequate Standard of Living. Resolution 2004/21 has acknowledged that a shelter or adequate housing is an essential element to achieve sustainable development in social, economy and environment.<sup>7</sup> This resolution also acknowledges that adequate housing is important to foster family coherency, to contribute to social fairness and to strengthen the sentiment in possession, safety and human solidarity. Therefore, the Resolution 2004/21 has urged all the countries to give full attention to the right to housing through domestic development policy at every government level, focusing on individuals and communities who live in poor areas. As Kenna (2012) notes that the adequacy level of housing may act as a floor or as a ceiling in the realization of States’ obligations.

#### 6. ASEAN DEVELOPMENT

Besides that, at the ASEAN level, article 1(1) of the Declaration of Basic Duties of ASEAN Peoples and Government states that it is the duty of every government to protect fundamental right of every individual, *inter alia*, by ensuring adequate standard of living.<sup>8</sup> Adequate standard of living consists of adequate housing. Article 1(2) of the Declaration of Basic Duties of ASEAN Peoples and Government provides that it is the duty of every government to respect, implement, enforce, ensure, maintain and protect individual right as stated in the international documents, such as, the UDHR and ICESCR.

In Malaysia, there is the Malaysian Charter on Human Rights in which article 9(1) says that everyone is entitled to get basic needs, such as, a shelter or house.<sup>9</sup> Taking into account that housing is one of the essential basic needs, the Government has taken the initiatives through institutional framework to ensure that consumers or Malaysian citizens can own a comfortable house. These initiatives are discussed below.

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<sup>5</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

<sup>6</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>7</sup> <http://www.refworld.org/docid/43f31361c.html>

<sup>8</sup> [http://www.hurights.or.jp/archives/other\\_documents/section1/1983/03/declaration-of-the-basic-duties-of-asean](http://www.hurights.or.jp/archives/other_documents/section1/1983/03/declaration-of-the-basic-duties-of-asean)

<sup>9</sup> [http://www.hurights.or.jp/database/E/malaysian\\_hr\\_charter.pdf](http://www.hurights.or.jp/database/E/malaysian_hr_charter.pdf)

## 7. THE ROLE OF INSTITUTIONAL FRAMEWORKS

There are three institutional frameworks which are responsible for housing in Malaysia. The main institution is the Ministry of Urban Wellbeing, Housing and Local Government. The Government has also established National Housing Department, 1Malaysia PRIMA Corporation and National Housing Company Limited.

## 8. MINISTRY OF URBAN WELLBEING, HOUSING AND LOCAL GOVERNMENT

The Ministry of Urban Wellbeing, Housing and Local Government was established on 24 May 1964 as the Ministry of Local Government and Housing.<sup>10</sup> Following a Cabinet reshuffle on 18 July 1978, the name of the Ministry was changed to Ministry of Housing and Local Government. Later the name of the Ministry was changed to the Ministry of Urban Wellbeing, Housing and Local Government.

The vision of the Ministry is as follows:

To establish continual and sustainable living environment for all levels of Malaysian society in line with vision 2020. The mission of the Ministry is planning, coordinating and implementing excellent human settlement through comprehensive housing programs, uniformed development control with integral infrastructure facilities, social and recreational services towards building a dynamic society. The goal of the Ministry is to realize a comfortable living environment, and peace through socio-economic balance.<sup>11</sup>

In order to achieve the above goal, the Ministry has five objectives, which are:

(1) to establish and implement comprehensive and uniform nationwide rural and urban planning to strengthen and promote physical, social, economic and environmental development; (2) to encourage, develop and guide local authorities to establish high quality urban, social and recreation services and to provide opportunities for uniform economic growth; (3) to ensure adequate, comfortable, and balanced housing development, complete with social and recreational facilities; (4) to ensure the safety of life and property through preventive and supervisory services regarding fire and dangerous materials, efficient and effective emergency and rescue services and the raising of public awareness and education on fires and fire prevention; (5) to develop landscaping, parks and quality recreational facilities and achieve the objective of making Malaysia a garden nation. In upholding the consumers' right housing, the role of the Ministry can be seen in providing affordable housing for those who qualify and regulate housing development.<sup>12</sup>

Besides that, the Ministry of Housing and Local Government has outlined five policy statements pertaining to improve the implementation effectiveness and compliance with the regulations, laws in relation to delivery system of housing services, such as:<sup>13</sup>

- i) formulating, improving and enforcing laws, regulations and guidelines pertaining to the housing sector;
- ii) enhancing the Government's service delivery system related to housing through policy coordination and implementation involving various agencies;
- iii) encouraging the BTS (*Build Then Sell*) concept in the housing provision system; and
- iv) improving relations and collaboration among the public and private sector as well as professional bodies in the housing sector; and
- v) public housing programs at the federal level are placed under the responsibility of a single federal agency which plans, implements, sells/rents and maintains them. State Governments are still responsible for public housing programs at the state level through their subsidiary agencies.

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<sup>10</sup> [http://www.kpkt.gov.my/kpkt\\_2013/index.php/pages/view/325](http://www.kpkt.gov.my/kpkt_2013/index.php/pages/view/325)

<sup>11</sup> [http://www.kpkt.gov.my/kpkt\\_2013/index.php/pages/view/325](http://www.kpkt.gov.my/kpkt_2013/index.php/pages/view/325)

<sup>12</sup> [http://www.kpkt.gov.my/kpkt\\_2013/index.php/pages/view/325](http://www.kpkt.gov.my/kpkt_2013/index.php/pages/view/325)

<sup>13</sup> <http://www.rehdainstitute.com/landed-or-high-rise/71.html>

## 9. DEPARTMENT OF NATIONAL HOUSING (JABATAN PERUMAHAN NEGARA)

The Department of National Housing is one of the units under the Ministry of Urban Wellbeing, Housing and Local Government. The department has enacted National Housing Policy (NHP). NHP was launched on 10 February 2011. The objective of NHP is to provide adequate, comfortable, quality and affordable housing in order to enhance sustainable life of the people. Being a foundation in housing planning and development, NHP is always referred to by all housing related ministries, departments and agencies at federation, states and local levels and also by the private sectors. NHP is enacted based on 6 thrusts as follows:<sup>14</sup>

- |          |   |
|----------|---|
| Thrust 1 | Provision of Adequate Housing Based on the Specific Needs of Target Groups.                                   |
| Thrust 2 | Improving the Quality and Productivity of Housing Development   |
| Thrust 3 | Increasing the Effectiveness of Implementation and Ensuring Compliance of the Housing Service Delivery System |
| Thrust 4 | Improving the Capability of the People to Own and Rent Houses   |
| Thrust 5 | Sustainability of the Housing Sector  |
| Thrust 6 | Enhancing the Level of Social Amenities, Basic Services and Livable Environment                               |

The Department of National Housing has developed National Housing Policy Action Plan to achieve these six thrusts of NHP. Action Plan for Thrust 1 is focusing on the cooperation at all levels between the Government and private sector in developing medium-cost houses and affordable houses. Action Plan for Thrust 2 of the NHP has outlined policy statements that have to be observed by the relevant Government agencies and private sector to improve the quality and productivity of housing development. The policy statements that have been outlined are the use of skilled, trained and accredited workers for construction works to raise the quality of construction through approved and accredited systems; setting the quality standards and minimum housing specifications; and increasing the use of local building materials.

Meanwhile, Action Plan for Thrust 3 focuses on measures ensuring compliance with laws and rules related to housing development. Action Plan for Thrust 3 is also focusing on encouraging the BTS concept in the housing provision system. Various initiatives are given to the housing developers who implement BTS, such as:

- a. Exemption from deposit payment of RM200,000 when applying for a housing development license;
- b. Full release from developing low-cost houses; and
- c. Fast lane priority for all housing development transactions, such as, conversion of land condition, approval of housing plan, approval of other technical departments within 4 months and other priorities. .

The Action Plan for Thrust 4 is implemented through various programs, such as, financial assistance and subsidies and setting prices for low-cost houses as well as controlling ownership and sales to avoid speculation, and setting a realistic rental rate for low-cost houses.<sup>15</sup> On the other hand, through Action Plan for Thrust 5, the Government and private sectors will increase the cooperative effort in housing sector through balanced development implementation and the use of environmental-friendly housing development concept with new technologies and innovations, such as green technology. Meanwhile, Action Plan for Thrust 6 are materialized among others, through providing housing and sustainable development complete with basic amenities and facilities based on standards and current needs as well as other social needs to create a conducive and livable environment.<sup>16</sup>

All the Action Plans and Thrusts of NHP can be concluded as an action plan parameter which could materialize Transformation Program of the Government, especially in housing related issues. Efforts towards Transformation Program can be categorized into two:

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<sup>14</sup> [http://kpkt.gov.my/kpkt\\_2013/fileupload/dasarDRN\\_BI.pdf](http://kpkt.gov.my/kpkt_2013/fileupload/dasarDRN_BI.pdf)

<sup>15</sup> [http://kpkt.gov.my/kpkt\\_2013/fileupload/dasarDRN\\_BI.pdf](http://kpkt.gov.my/kpkt_2013/fileupload/dasarDRN_BI.pdf)

<sup>16</sup> [http://kpkt.gov.my/kpkt\\_2013/fileupload/dasarDRN\\_BI.pdf](http://kpkt.gov.my/kpkt_2013/fileupload/dasarDRN_BI.pdf)

- i) providing affordable houses for those in the middle income category; and
- ii.) providing affordable houses for those in the low income category.

The Department of National Housing has also planned, implement and monitor housing sector besides ensuring quality housing development, especially for the low income category. Through policy statements drafted by the Ministry of Housing and Local Government, low-cost homes and affordable homes have been implemented under the 10<sup>th</sup> Malaysian Plan (2011-2015) with the slogan of 1Malaysia, People First, Performance Now as a catalyst to those involved in the programs to work hard to make the programs successful. Under the 10<sup>th</sup> Malaysian Plan, the Government is committed to provide quality and affordable housing to the people.

#### **10. 1MALAYSIA PRIMA CORPORATION (PERBADANAN PERUMAHAN RAKYAT 1MALAYSIA)**

1Malaysia PRIMA Corporation was established under section 3 of the Perumahan Rakyat 1Malaysia Act 2012. This Act came into force on 1 January 2013. 1Malaysia PRIMA Corporation is under the Prime Minister Department. 1Malaysia PRIMA Corporation is the only agency which is responsible to develop and manage the development of affordable and quality houses for the middle income category in urban areas. 1Malaysia PRIMA Corporation will act as a project developer to housing development on Government lands. In this respect, PRIMA Corporation will provide RM500 millions for the purpose of housing development with the cooperation of private housing developers. 1Malaysia PRIMA Corporation also plays an important role in ensuring that the distribution of houses is made transparently and honestly through open balloting system and the housing price is targeted at twenty percent cheaper than the market value.

1Malaysia PRIMA Corporation has fixed the following conditions in order for a consumer to buy a house under 1MalaysiaPRIMA Corporation project:

- i. first time buyer and must live in the house – the house cannot be rented out to other person;
- ii. loan for 105 percent from selected financial institutions with the maximum period of payment for 30 years;
- iii. the buyer is not allowed to sell the house within 10 years;
- iv. the buyer has the option to use part of his Employees' Provident Fund to pay back the loan; and
- v. the exemption of stamp duty.

#### **11. NATIONAL HOUSING COMPANY LIMITED (SYARIKAT PERUMAHAN NEGARA BHD (SPNB))**

SPNB was established on 21 August 1997 as a wholly owned subsidiary of the Ministry of Finance with the objective of providing quality affordable homes for every family in Malaysia in accordance with the NHP.<sup>17</sup> SPNB is responsible in implementing affordable homes and citizen friendly homes programs. Through affordable homes program, houses are built with the concept of family friendly and convenience. The houses have three bed rooms with two bath rooms. The houses consist of low-cost, medium low-cost and medium cost. Meanwhile under the citizen friendly homes program, the houses are built on the lands owned by the landowners. The citizen friendly homes program is created to help poor people who do not have any houses but have lands to own a convenience house. They have to pay monthly instalments to the Government which is very affordable for the cost of the house.

#### **12. CHALLENGES AND SUGGESTED SOLUTIONS IN UPHOLDING THE CONSUMERS' RIGHT TO HOUSING**

Although the Ministry of Urban Wellbeing, Housing and Local Government with the help of the 1Malaysia PRIMA Corporation Malaysia, National Housing Company Limited private sectors are trying to build houses to

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<sup>17</sup> <http://www.spnb.com.my/eng/corporate>

cater for the needs of the people or consumers, there are still challenges that have to be faced by the Government and the housing related institutions. One of the challenges is to match demand for housing with supply, based on location and affordability (10th Malaysian plan). The demand for affordable houses is high in the urban areas compared to the rural areas. Due to rapid development in the urban areas, more houses are needed because more people live in the urban areas. However it is difficult to fulfill the demand due to very limited affordable houses can be built at the urban areas. This limitation is due to the limited lands and the price of the land is very expensive in the urban areas. Therefore, to build houses in urban and outskirt urban areas are very expensive, beyond the affordability of the low and middle income groups. Those low and middle income groups have to rent houses or find houses outside the urban and outskirt urban areas. Renting houses in the urban or outskirt urban areas is also expensive. However, the question is, are the Government, housing related institutions and private sectors willing to build affordable houses in the urban areas where the price of the land is very expensive? Private sectors are more interested to build high cost houses in the urban areas due to high demand and high profit returns.

The effort of the Government in developing affordable houses is good because houses become more affordable when government involves itself in providing individual (consumer) with a subsidy to pay for it (David (2011). However, as mentioned in the preceding paragraph, to build affordable houses in the urban areas is very challenging because the price of the land is very expensive. Therefore affordable houses can only be built in small town or rural areas. The problem here is how to cater houses for consumers or individuals who are working in the urban areas? It seems that those consumers have to rent for life and have no opportunity to own their own house.

Apart from implementing affordable homes and citizen friendly homes programs, the Government needs to take other measures such as controlling the price of the houses. As it is now, the Malaysian Government does not intent to control the price of the houses. The price is left to the supply and demand. The policy of the Government not to control the price of the houses will result in the rich people own more houses, leaving the poor, low-income and middle-income groups without houses of their own. Besides that, according to Ezeanya (2004) Malaysia has lost its traditional form of identity. The existing housing programs and consequent development do not acknowledge or respect the existing tradition; instead they adopt a Western concept, which is essentially foreign to the Southeast Asia landscape. The restore to the traditional identity is important. The government should not simply to augment housing supply with a minimum concern for social tradition and environmental issues as a part of the country's Vision 2020,

Besides that, there should be provided in the National Housing Policy the stringent conditions to buy second and subsequent houses. For example, in the National Housing Policy, it should be stated that a consumer can only buy a second house which is above certain price. For the subsequent houses, the price range should be higher than the second house. This measure can overcome a problem of one consumer from owning many houses, denying the right of other consumers. Besides that, it can also indirectly control the price of the houses.

### 13. CONCLUSION

The above discussion reveals that many international documents have recognized the consumers' right to housing. The Malaysian Government through its Ministry of Urban Wellbeing, Housing and Local Government and housing related institutions have been trying to uphold the consumers' right to housing by implementing various housing programs besides the enactment of National Housing Policy by the Department of National Housing. Nevertheless the challenges faced in providing consumers with affordable houses and upholding their right to housing, especially in urban areas are not easy to solve. Unless the Government also controls the price of the land in urban areas, no affordable houses can be built in those areas and this will greatly affect Thrust 4 of the National Housing Policy which is to improving the capability of the people to own and rent houses and also affect the consumers' basic right to housing.

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