

## REGULATING RETIREMENT VILLAGE IN MALAYSIA; THE WAY FORWARD

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### ABSTRACT

*As Malaysia is predicted to be an ageing nation by the year 2030, developing a retirement village shall be an avenue for senior citizens to have a welfare and conducive placement for them to spend their time with value-added amenities that cater their special needs. Nevertheless, the hurdles that Malaysia faces is the non-existence of any legal framework to govern the establishment of retirement village in Malaysia. As a result, this has caused problems not just to the authorities but also the operators or developers who might be interested to embark in this kind of project. This paper discusses the overview concept and elements of retirement village sector in Malaysia and other jurisdictions, and the possibility of having a sustainable legal framework in regulating the sector. The legal issues and possible unintended consequences that may arise out of the development of retirement village in Malaysia is also discussed in this paper. Document analysis on relevant Malaysian retirement village is conducted. Reference to other models of retirement village in other countries is also made in identifying the suitable practices to be implemented in Malaysia. Having a proper legal guideline on this shall improve the well-being and quality of life of Malaysian senior citizens in line with Sustainable Development Goals. This legal framework shall be helpful to the authority, government agencies, community, and operators of retirement village in Malaysia.*

Keywords: retirement villages, elderly, senior citizens

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### INTRODUCTION

Active ageing means improving the quality of life with regard to one's health, social, physical and environmental features (Jumadi et al., 2019). This concept is common in several jurisdictions such as Japan, the United Kingdom and the United States of America, where there are more active engagements in terms of the contributions of their senior citizens towards the country's social and economic development. Such a trend is anomalous in Malaysia, to perceive that generation as a vulnerable and less productive group. Thus, there is a need to enhance efforts which are focused on benefiting senior citizens by preparing a promotive residential setting for them to experience active ageing in a healthy environment. The concept of retirement villages is one such example that can be pursued to achieve this purpose.

The concept of retirement villages is not a foreign concept in Western countries. It was a recognized sector of property way back since the 1950's (Keogh & Bradley, 2002). In Australia, particularly in West Australia, the operators of retirement villages are either private companies or non-profit organisations with the help of the local authorities (Government of Western Australia, 2019).

Retirement village may be operated by charitable or religious bodies, or public authorities or by commercial developers (Graycar, 1986). The types of retirement villages range from serviced apartments, hostel accommodation, to small unit houses. It can be a self-care unit whereby the operator provides management services. Retirement villages are new alternative solutions for senior citizens to have comfortable housing combined with care services and social activities (Lundman, 2020). This concept is increasingly popular in various parts of the world especially the Australia, the United Kingdom and the United States (Osei-Kyei et al., 2020).

Retirement villages should be distinguished from residential aged care facilities, nursing homes or care homes which provide treatment and care for the elderly. It must be made clear that the concept of a retirement village is not a place to care for the disabled or abandoned elderly, but where initiatives are taken to provide quality of life for the elderly. The residents of retirement village are still healthy and do not require much care (Hassan & Jiaqi, 2017). It is in between of institutional care settings and home settings (Lundman, 2020; Marenbon et al., 2016). It is a management intensive operating business with real estate component. The push factors for the elderly to opt to live in a retirement village is due to health concerns, death of spouse, house maintenance problem, lifestyle change and to be close to their children (Sufian & Mohamad, 2013). Meanwhile the pull factors that attract their interest are the environment, location wise and affordability. Retirement village does not only cater independent living units, or village concept but also serviced apartments. The concept of retirement village comprised of three social trends which are medicalization of ageing, development of positive-ageing institutions and the improved lifestyle (Lim et al., 2019). In Australia, up to 63 per cent of their senior citizens prefer staying in retirement villages with professional care services.

There has been increasing interest in the research on retirement village globally due to the increasing demand on retirement village in various countries in the world (Osei-Kyei et al., 2020). However the research gave less focus on the legal aspect that should be observed in creating retirement village in a country (Lundman, 2020). In order for such a project to be sustainable, a proper legal framework should be in place to protect the rights of the elderly as well as to encourage and facilitate housing developers and operators in setting up more retirement village projects for the benefit of the Malaysian elderly community. There are several ambiguities on legal issues concerning the registration and recognition of the institution, the rights and protection

available for the residents, building specifications, the status of the land, and so on that need to be addressed. As this is rather a new concept for Malaysia, the introduction of a comprehensive legal framework governing retirement village shall be helpful to both ends, the developer or the operator as well as the senior citizens in Malaysia.

Although retirement village is a new concept to be practised in Malaysia (Yassin et al., 2018), the increasing demand of retirement villages in various developed countries illustrates a potential market in Malaysia (Hassan & Jiaqi, 2017). Thus, this research is significant to identify the legal features that need to be given attention for the concept to be sustainable in Malaysia. These legal elements need to be regulated in the form of a legal framework by having a specific regulations or acts governing retirement village in Malaysia. Before a comprehensive legal tool be introduced and drafted, the legal issues and problems need to be identified as to ascertain which legal aspects need to be regulated. The legal features shall be extracted from the existing model of laws and regulations governing other countries that have priorly regulated retirement village in Malaysia. Besides that, the legal features shall also be adapted from the experiences recorded in other documents and literatures of those who have experienced operating retirement village for the elderly community. Therefore, this paper tries to provide early overview on the possibility of regulating retirement village in Malaysia. This paper also tries to identify the problems and legal issues that need to be addressed as a preparation in constructing a proper legal framework governing retirement village in Malaysia. The possible legal regimes that may be adapted and transplanted by Malaysia is also discussed in this paper. These shall act as an initial works before the construction of a comprehensive legal framework for retirement village in Malaysia.

## RETIREMENT VILLAGES IN MALAYSIA

The Current Population Estimates Malaysia 2020 issued by the Department of Statistics, Malaysia reports that there is an estimate of 3.5 million of citizens in Malaysia aged 60 years and above (Department of Statistics Malaysia, 2020). This makes up 10.7 percent of the total population in Malaysia. As far as age structure is concerned, there is an annual increase in the number of senior citizens; while the percentage of the population sector under 64 years is decreasing, the number of citizens aged 65 years and above increased from 6.7 per cent in 2019 to 7.0 per cent in 2020.

It is predicted that the number of older people aged 60 and above will reach 5.8 million in 2030 which is 15 per cent of the total population of Malaysia. Thus, this proves that Malaysia is heading towards becoming an ageing nation by the year 2030 (Harun et al., 2020). This pattern is a worldwide phenomenon and is categorised as a global demographic megatrend.

In view of the above, the country's future planning must necessarily include the welfare and conducive placement of its senior citizens. The increase in the number of the elderly has led to a new cultural context in Malaysia, where the old look for residential abodes that provide a self-sufficient environment for them to spend their retirement years, with value-added amenities that cater for their needs. This an evident shift from 30 years ago, where grandparents preferred living in their own homes while spending time with their grandchildren (Abdul Majid et al., 2018). Other contributing factors to this transition, apart from the growing percentage of the older population, are their education level and aspirations, which include heightened awareness on the importance of health and safety, technology, and quality life.

Consequently, a retirement village is an emerging concept that suits the present and future older generation, allowing them to experience quality well-being through active ageing. In addition, as one of the target groups under Shared Prosperity Vision 2030, senior citizen will have the opportunity to age gracefully by having a proper residence which support their emotional, physical and health conditions. Having a properly planned platform for elderly to have active ageing is important in developing the growth of the country. Through having retirement village, the elderly shall have the opportunity to have residential areas which integrate the physical and natural infrastructure that facilitate them with elderly friendly amenities to deliver sustainable, resilient, and prosperous living conditions.

There are a few retirement villages in Malaysia, which are The Green Leaf (Sepang), Ara Greens Residence (Ara Damansara), Green Acres (Ipoh) and Eden-on-the-Park (Kuching). The government of Perak in 2019 has announced that they have made collaboration with Fukuoka City, Japan to initiate a retirement village project in Ulu Slim (Peraktoday.com, 2019). Land comprising 780 acres has been allocated by Perak state government for this project. In addition, Green Acres in Meru, Ipoh is also one of the pioneer projects of retirement village in Malaysia. It is a gated and guarded community, with senior friendly home consisting of six different villa designs. This project emphasises on the community belonging by highlighting the values of friendship, support and care. They provide club house which consists of gym, movie theatre, karaoke lounge, saloon, library and other facilities. Therefore, the residents here enjoy a comfortable life with senior friendly facilities and at the same time may enjoy visits from their children and family once in a while.

Thus, this scenario is different with care home where the elderly are placed there to be care by the personnel in the institutions. In Malaysia, homes for elderly consisting of homes governed by Department of Social Welfare, Non-Governmental Organisations (NGO's) and private provider. Care Centres Act 1993 regulated these homes (Sulaiman et al., 2006). These homes are different to retirement village in terms of its operation and service provided.

For retirement village which are exclusively built for the Muslims, they are not usually named as 'retirement village' but rather 'Pondok Warga Emas'. Muslim retirement villages in Malaysia are growing in numbers but there are no data on the actual numbers as there is no existing mechanism as to date to register the Muslim retirement village under any government authorities. One of the pioneers is Kompleks Yayasan Al-Jenderami located in Dengkil, Selangor. They utilised the concept much similar to retirement village by providing accomodation for the elderly who volunteers to resides there to learn more about Islam. Majority of Muslim retirement villages do not obtain any assistance from the government as there is no specific procedure for them to register. Therefore, in financing the institutions, the fund comes from *waqaf*, *zakat* and *sodaqah* (Kamal et al., 2019). Their funding may also come from the monthly contribution or fees of the residents.

Another example of Muslim retirement village is Madrasah Ibnu Mas'ud which is located in Segamat, Johor (Masod@ Masut & Mutalib, 2019). The institution now has a branch in Nilai, Negeri Sembilan. The concept of 'pondok' is improved in this branch where they choose to improve the institution especially in terms of build environment of the institution. Build on a land which has a small stream and nature background, this provides serenity and calmness to the residents there. The English style concept of the buildings also offer a fresher atmosphere for the residents.

This type of Muslim model of retirement villages are not care home taking care of senior citizens but they operate as an organization that provide platform for the elderly to learn more Islamic knowledge, perform religious activities and so on in a specific place where they live in a community. As the institutions are not providing care for the elderly, neither can they be registered under Social Welfare Department, nor that they can register under the Religious Department as there are not considered as a school like Tahfiz School. Therefore, regulatory framework is a need not just to protect the rights of the residents but also to assist the operator for them to be recognized under the law. Through recognition or registration, there would be entitle for any assistance and monitoring that would help to enhance the quality of the Pondok system. As currently most of the operators are private individuals or NGOs, assistance from the government would be welcomed as to provide more quality active ageing platform for the senior citizens. As a return, the operators need to adhere to the legal requirements so that the rights of the residents would be protected.

However, there are certain 'Pondok Warga Emas' which provide treatment center as can be seen in Pondok Unais which is located at Sungai Buah, Bangi, Selangor (Wakaf Pondok Unais, 2021). Another muslim retirement village in Bangi which is named as Darul Insyirah goes one step further by having several categories of centres according to the condition of the residents (Darul Insyirah, 2020). Darul Insyirah Aisyah and Darul Insyirah Fatimah are mainly for the elder citizens who can manage themselves and in good health condition. Meanwhile, Darul Insyirah Khadijah accomodates for those having health problems and need specialised and regular care. Thus, pertaining to muslim retirement village, categorisation should be made in regulating the centres as the facilities and concept taken by each centres are different especially in terms of providing care and treatment for the residents.

In addition, for Muslim community, ageing actively does not merely limit to having better social life, safe and comfortable living, or merely fulfilling basic needs but go beyond that in emphasising spiritual and religious activities (Jumadi et al., 2019). Therefore, religious space such as mosque is a need for Muslim retirement village in providing comfort in performing religious activities. With the spiritual and religious features, retirement village shall suit the active ageing among Muslims as studies illustrated that Muslim elderly were more keen towards religious activities rather than leisure activities such as walking, exercising and so on.

Furthermore, elderly people are prone to 'empty-nest' syndrome or feelings of loneliness due to several factors such as being alone or abandoned by children living elsewhere (Ahmad et al., 2019). The effect of this syndrome is that they will feel sad as well as experience stress or health problems both mentally and physically. Thus, retirement village is a good alternative for the elderly to find a peace of mind. Besides that, by residing in this community, their time is well arranged to be occupied with Islamic lessons and interesting activities (Abu Bakar et al., 2016).

In studies identifying the factors that attract the elderly to stay in a Muslim retirement village is the intention to deepen their knowledge in Islam, and to occupy their time with Islamic practices (Majid & Azizmai @ Azmi, 2018). They learn various Islamic lessons ranging from *tawheed*, *tasawwuf* to Arabic language. The method used in their lesson depends on their ability and level of education (Mariam, A. M; Sahlawati, A. B.; Safinah, I. & Zabidi, 2017). Moreover, there are seven themes highlighted by a study done in Pondok Rahmaniah Lubuk Tupah in examining the needs of the elderly towards retirement village (Safinah et al., 2017). The seven themes are namely finance, knowledge, congregation, facilities, welfare and beneficial activities. These institutions attracted the elderly as their needs are fulfilled in terms of motivation, shelter and services, spirituality, encouragement, love and security. This shows that various necessities of the elderly can be fulfilled through having such institution for them.

## LEGAL ISSUES

In flourishing the concept of retirement villaes in Malaysia, there are regulatory deterrents particularly on the non-existence of a particular legal framework governing this concept. As far as statutes regulating standards of care of the elderly are concerned, Care Centre Act 1993 and Private Healthcare Facilities 2018 are legislations that concern about elderly care. The Care Centre Act 1993 is more relevant to rehabilitative care centres and old folks home while Private Healthcare Facilities & Services Act governs standards of care concerning professionals such as in private hospitals. There is no legislation or specific legal tool to regulate retirement village (Yassin et al., 2018). The concept of retirement village moreover should be differentiate with care homes or nursery looking after disabled elderly as retirement village caters elderly or retiree who is still fit and healthy and can take care of themselves with minimum continuum of care.

According to Ageing Asia Pte Ltd's Asia Pacific Silver Business Opportunities Report 2015, by 2025, in meeting 5 per cent of demand of retirement village, there must be at least 1000 retirement villages with each village has 200 single living apartments (King Wai, 2016). Therefore, predicting that more retirement village is to be set up in Malaysia in near future, regulating the village is a must in maintaining its sustainability.

There is a need to regulate retirement village in protecting the rights of the occupants who are the senior citizens. The concept need to be scrutinised as not to jeopardise their rights. The units they reside shall be ascertained in term of the ownership of the units. Some retirement villages practise the lease model while the others may choose outright sale model. One of the pioneers of retirement village in Malaysia, Green Acres in Ipoh opted the concept of lifetime leases (Majid & Azizmai @ Azmi, 2018). The occupant need to pay lease deposit of RM310 000 and there will be monthly charged depending on the units size .The occupants will receive back their deposit when the lease is terminated. There are legal issues need to be addressed here for example when there is death of the resident. There is no clear laws and regulations as to whether the lease deposit is terminated or the deposit need to be returned to their heirs. Thus, the protection available for the residents need to be clearly regulated in rules, regulations of act.

In addition, there must also be guidelines as to the specifications needed in building retirement village. The units must be suitable for senior citizens which may not be found in normal housing projects. The architecture and design of the units must cater the needs of the elderly. Grab bars in the toilets, emergency bells, unobstructed passages, ramps and so on are examples of certain customised features that need to be given attention. As can be seen in New Zealand Retirement Villages Code of Practice 2002 (included variations as of April 2017), several matters are inserted in the code of practice with regard to the safety and personal security of residents, fire protection and emergency management, maintenance and upgrading and others. On top of that,

the introduction of green concept of building for these institutions may be considered as what can be seen proposed to be done in Australia (Zuo et al., 2014). This includes the selection of building materials which are thermally friendly, equipments that conserve water, better waste management system and so on.

Other issues that need to be addressed in the legal framework is on the services provided to the residents, the cost of the service or any division of cost bear by the residents and the operator, the cost of any refurbishment and reinstatement of units, the procedure after the resident leaves or dies and ongoing charges when there is death of the resident (Victorian Government, 2018). A clear guideline need to be drafted as to prevent any miscommunication or disputes in future.

There are also issues on land use classification in getting approvals for the development of retirement villages. There is no clear law and regulation as to categorise retirement village under residential, commercial or institutional. This is the dilemma faced by the operators as the ambiguous state of law regarding the status of the project will cause unproductivity and delay to the project. As a result, the developers or operators may be reluctant to proceed with the development of retirement village as there various unsettled legal issue surrounding this concept in Malaysia. A sustainable legal framework shall inject a drive for the operators to be more interested with the development of retirement villages in Malaysia.

Nonetheless, the laws and regulations will only be effective when there are robust enforcement that would encourage compliance by the operators. The regulatory authorities too must have adequate information and resources not just to enforce the laws through penalising any nonadherences, but also to provide technical assistance in encouraging compliance (Levine, 2015).

Therefore, there must be proper legal framework in governing retirement villages in preserving the rights of the elderly. In developing a legal framework for Malaysia, lessons and guidance from other jurisdictions may be taken into consideration. Since this concept has been in existence in Australia since 1970s and United Kingdom since 1990s, these countries' legal framework on retirement village are worth to be analysed. This industry in Australia for instance has been considered as one of the matured in the world (Osei-kyei et al., 2019). The difference of the legal regime utilised in both jurisdictions shall also be of helpful to Malaysia in developing a sustainable legal framework governing retirement village in Malaysia. The legislation need to be comprehensive touching on several salient features including health and safety, building guidelines, consumer protection, legal ownership structure, and financial and contractual arrangements.

## **REGULATING RETIREMENT VILLAGE**

Retirement village has been a concept accepted and legislated in Australia. In Australia, retirement village is regulated by set of laws and regulations which are Retirement Village Act 1999, Retirement Villages Regulations 2000 and State Environmental Planning Policy (Seniors Living) 2004 (Sufian & Mohamad, 2013). Meanwhile in New Zealand, retirement village is also properly regulated (Ramli & Kamaludin, 2021). New Zealand enacted Retirement Villages Act 2003 which is supplemented by Retirement Villages (Disputes Panel) Regulations 2006 and Retirement Villages (Fees) Regulations 2006.

Generally, the arrangement between the operator and the resident of retirement village is on contractual basis (Government of Western Australia, 2019). Nevertheless, the main reason in choosing retirement village is the lifestyle provided and not the contract or fees. They are yearning for a life after retirement with safe environment, properly designed for easy ageing, has access to medical services and other facilities. All these make up a lifestyle that brings quality of life in their retirement period. Despite of high percentage of satisfaction of the residents in Australia on the retirement village services, there are issues concerning consumer protection due to complaints received by residents particularly on financial matters. Some of the residents for instance are not aware of the true cost of living in retirement village as it includes exit fees apart from the monthly service fees. Furthermore, it was reported that the expose made by a media in Australia on the exploitation of vulnerable residents by the retirement village industry shocked the whole country (Hassan & Jiaqi, 2017). Consequently, this led to the call for regulations reform in Australia. Thus, these unintended consequences should be catered through legal approach as to protect the residents' rights.

Nevertheless, in regulating a retirement village in Malaysia, it is important to emphasise that the aims of the regulation are not just to protect the residents, but also to encourage compliance by the developers and operators by assisting them with proper guidance on how to comply with the legal requirements.

As Malaysia does not have specific statute governing retirement village, when problems such on management of ownership of the houses emerge, the stakeholders have to refer to the existing laws and regulations which are not customised to cater retirement village's issue. The diverse laws such as laws on strata title, ownership, and consumerism may cause difficulties and confusion and thus will not encourage more projects on retirement village to be set up in Malaysia in near future. Furthermore, these problems or issues should be prevented earlier before the launch of higher numbers of retirement villages which shall cause problems to the landscape of an ageing nation for Malaysia.

By legalizing these institutions through a proper regulatory framework, the benefits shall return the elderly since there is possibility of engagements between the institutions themselves or other institutions such as higher learning institutions. This was what proposed by a study to promote long life learning that can be beneficial to the residents (Abdullah et al., 2019). Therefore, they will not just have Islamic classes or lessons from one or two teachers, but they may have opportunity to gain knowledge from academicians from higher learning institutions. On the other hand, the residents here who have high level of education and experience in their working life in return may contribute to the society by sharing their experiences and knowledge to the people. This community network shall be beneficial to the elder and younger generation of the society.

Legal framework is needed to protect the residents' rights and to assist the operator in obtaining legal recognition. Through recognition or registration, these institutions would be entitle for any assistance and monitoring that would help to enhance the awareness of the society as well as the readiness of the operators to embark in this project.

In relation to the above, in developing a Malaysian legal framework, examples of legal framework of other jurisdictions should be analysed to learn lessons and legal challenges that have been faced by these countries. Australia is appropriate to be taken as a benchmark country in this research as retirement village industry in Australia can be traced back in the year 1970s and was started to be legislated since 1980s (Osei-kyei et al., 2019). Retirement village in Australia furthermore is considered as one of the matured in the world. The increasing numbers of retirement villages in Australia which is predicted to accommodate 320 000 -350 000 residents by 2023 illustrate the impressive developmental growth of the concept in the country (Hu et al., 2017).

Furthermore, the government of Western Australia has recently conducted retirement village law reforms 2019-2020 in enhancing the laws and regulations on their retirement village. Thus, Australia legal framework should be a benchmark for Malaysia. Lessons and challenges learned from experiences of this country governing retirement village shall be valuable for Malaysia.

In addition, the legal framework practised in United Kingdom may also be given attention. This concept was originated in United Kingdom for the past 30 years (Osei-kyei et al., 2019). This implies the vast experience the country has in managing retirement villages to accommodate the needs of their senior citizens. United Kingdom does not have a specific statute governing retirement village as what Australia is having. Retirement village in United Kingdom is governed under Care Act 2014 which focuses on protection and need of elderly. Therefore, in developing Malaysia legal framework, analysis of the practices done by these experienced countries shall be taken into consideration. The two types of legal regime by having a specific statute and secondly by having a general statute should be analysed in determining the suitable legal framework that is suitable for Malaysia.

The legal features that need to be carefully addressed shall response to the deterrents or legal issues surrounding retirement village. Amongst the legal features are the status of the institutions which relate on the procedures of registration and recognition, the rights and protection available for the residents, the building specifications, the services provided and land use classifications.

## CONCLUSION

Further study on retirement village in Malaysia is significant as this will directly benefit the stakeholders particularly the elderly community in Malaysia. In becoming an ageing nation by 2030, the study shall contribute to the social development of the Malaysia by assisting the country to prepare a proper avenue to encourage active ageing among the elderly population. As mentioned by Minister of Housing and Local Government, the long term impact from having a proper retirement villages for senior citizens can be seen when this idea may lessen the government burden in terms of cost for healthcare, hospitals and medication as their health are being taken care at earlier stage preventing health complications in their retirement age (BERNAMA, 2021).

Further study shall also be beneficial to the law and policy makers such as Social Welfare Department under the Ministry of Women, Family and Community Development and local councils under Ministry of Housing and Local Government in enhancing the quality of elderly community in Malaysia.

In addition, a sustainable legal framework would invite more developers to endeavour into the project as they are more confident that it is sustainable. The growing awareness of the concept shall also be flourished, to correct the stigma that retirement village is similar with the concept of old folks' home. Preparing a suitable platform for senior citizens to have a quality life after retirement would be beneficial to the nation. The elderly will have the avenue to contribute to the society and increase values to their lives.

Besides that, having a holistic legal framework to govern the establishment of retirement village in Malaysia is in line with Sustainable Development Goals (SDG) particularly on SDG 3 on good health and well-being, SDG 9 on Industry, Innovation and Infrastructure, SDG 11 on sustainable cities and communities and others on societal harmony and happiness. Retirement village will provide residential with amenities that cater the needs of the elderly, combined with social activities and programmes that would contribute to good health and well-being of senior citizens. This study identifying the legal features and possible legal regime that can be practised in developing a sustainable legal framework for Malaysia retirement village therefore shall be a catalyst for further research in developing a sustainable legal framework for retirement village in Malaysia.

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