

A Review on Property Rights Legislation in Malaysia's Strata Lease Scheme

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To Link this Article: <http://dx.doi.org/10.6007/IJARBS/v14-i4/21362>

DOI:10.6007/IJARBS/v14-i4/21362

Published Date: 06 April 2024

Abstract

In Malaysia, land leasing applications have extended to housing and commercial property development, particularly high-rise building development. It has given new possibilities to create the strata lease scheme. A strata lease scheme is a strata scheme that has a registered lease on all its strata titles. However, on these strata titles, the strata lease scheme's purchaser is registered as a lessee instead of a proprietor like any regular strata scheme purchaser. In the strata lease scheme, purchasers are given the right to enjoy the purchased strata parcel for possession of a 99-year lease. It has sparked debates among scholars on the issue of safeguarding these purchasers as lessee and their rights to property ownership. Hence, this article reviews the legislation on property rights in Malaysia's strata lease scheme. Two objectives of the study are to identify which Malaysian laws uphold property rights to strata lease scheme purchasers and to see if these property rights laws support the notion of a strata lease scheme. The study found that although a lease is not construed as a proprietorship, the rights may come into many forms, which can be a possession of a registrable interest, a 99-year lease term reflected onto the strata title.

Keywords: Property Rights, Strata Lease Scheme, Lessee, Lessor, National Land Code [Act 828].

Introduction

Expanding land leasing to include housing and commercial property development created new possibilities for establishing the strata lease scheme. Under the strata lease scheme concept, a registered lease is endorsed on all strata titles. Creating a lease on strata title begins with an agreement between the landowner and the strata unit purchaser. To complete the lease transaction, two parties sign a lease agreement, sometimes accompanied by a sale and purchase agreement. The lease agreement binds two parties: the lessor, who is the original land proprietor on which the strata building is developed, and the other, the strata unit purchaser, known as the lessee. A strata lease scheme does not exist throughout the stratified building's planning and development stage. When the building is completed, issuing strata titles under Section 17 of the Strata Title Act 1985 begins. The Management

Corporation becomes the proprietor of the lot on which the building stands, and the original land proprietor will be the proprietor of all strata titles. For a strata lease scheme, the lease instrument, Form 15A, as stipulated in Section 221(4) of the National Land Code [Act 828], must be registered to reflect the lease onto the strata title. According to Zainal et al (2023), lease registration must apply to all strata units. The strata lease scheme is legally constituted once the lease registration is completed. All strata titles are now part of the lease scheme, each with a registered lease. It is important to note that there is no transfer of title ownership in a strata lease scheme, according to (Zainal et al., 2023). Under the same scheme, if a number of strata titles are registered with the lease while others have their proprietary being transferred, this would be classified as a strata scheme rather than a lease scheme (Zainal et al., 2023).

Registering a lease in the Land Office must be considered to ensure the lease agreement between the parties is valid and enforceable. The lease grants the lessee the right to purchase and occupy the parcel for 99 years. When it comes to ownership, the person who initially bought the strata unit can sell it to someone else by transferring the remaining lease term. This transfer means the new purchaser becomes the next registered lessee on the strata title. While the strata scheme and lease scheme have standard features, like unit parcels, accessory parcels, and common properties, the registration memorial printed on the strata title highlights important differences. In a strata scheme, the purchaser is registered as the proprietor on the title, while in a strata lease scheme, the purchaser is registered as the lessee.

Studying the legislation on property rights in a strata lease scheme is crucial, particularly for property purchasers in a strata lease scheme. This is because strata lease schemes are complex and have unique legal arrangements that require a clear understanding of their laws and regulations (Zainal et al., 2022a). Even though the strata scheme and strata lease scheme look similar physically (Zainal et al., 2022b), the purchaser may get them mixed up. It's important to have knowledge about the strata lease scheme concept before purchasing a property under this concept.

By studying the legislation on property rights in strata lease schemes, property owners can ensure that they understand their rights and duties and any potential legal concerns that may emerge. Having this information can assist individuals in making well-informed choices regarding their possessions while avoiding expensive or time-consuming legal conflicts. Additionally, a solid understanding of the legislation can provide peace of mind and confidence in one's investment.

Understanding Property Rights

The legal authority that a person has over a specific piece of property is a simple explanation of what property rights are. The owner can use, sell, transfer, or dispose of the property as they see fit. Property rights are necessary in a free-market economy because they allow individuals to own and manage resources and assets, which forms the basis for economic growth. In many countries, the law protects property rights, ensuring that individuals can use their rights without interference from others. According to Mohamed et al (2013), understanding property rights varies across jurisdictions, customs, traditions, and legislations.

Property Rights Legislation in Malaysia

Malaysia does not have a single law that deals explicitly with property rights. Instead, property rights in Malaysia are governed by multiple laws. First, the National Land Code [Act 828] governs the classification of land property in Malaysia (Doroini & Lukman, 2022), setting out the rules and regulations concerning land ownership, registration, and dealing through transfer, lease, and charge. Freehold and leasehold titles abide by these rights (Doroini & Lukman, 2022). The National Land Code [Act 828] requires the owners or purchasers of land and strata parcels to register and to reflect on the title's memorial as either a registered proprietor or registerable interest to these lands or parcels. Section 340(1) of the National Land Code [Act 828] states that any individual whose name is registered shall obtain an indefeasible title over the land. Their exclusive right to use and enjoy the land can only be denied if their title registration is tainted by the circumstances listed under Section 340(2). Next, the Strata Titles Act 1985 governs the issuance of strata titles and other rights as interpreted by the National Land Code [Act 828], including rights to transfer, lease, and charge, as well as the right to indefeasibility of the registered strata titles. The Strata Management Act 2013 outlines the procedures for managing strata-titled properties like condominiums or apartments. It also addresses the rights and obligations of owners and occupants to their private property, including the units and accessory parcels, while sharing the rights of use to the common properties.

Article 13 of the Federal Constitution of 1957 serves as the law that upholds property rights in Malaysia where, in general, no one can be deprived of their property, and no law can permit the compulsory acquisition or use of property without proper compensation (Mohamad et al., 2013). Following Article 13(2) of the Federal Constitution, adequate compensation is an amount that considers all the principles stated under the First Schedule of the Land Acquisition Act 1960. The Land Acquisition Act of 1960 provides for the compulsory acquisition of land by the government for public purposes. It also outlines a comprehensive procedure for acquiring land with privately owned property with fair compensation. The Land Acquisition Act 1960 was introduced to ensure consistency across Peninsular Malaysia, as mentioned in Article 76 of the Federal Constitution. This act provided fairness to all private land and property owners. However, acquiring privately owned property, including the strata lease scheme, is never an easy task.

Overall, Malaysia's laws relating to property rights are designed to protect the interests of property owners and ensure a fair and efficient system for the transfer and management of property.

Issues on Property Rights in Strata Lease Scheme Development

Property rights in land are critical to any society's legal framework. These rights define who has the legal authority to own, use, and transfer land. The issue of property rights in land is complex and multifaceted, and it touches on a range of important topics, including economics, politics, and social justice. Many countries struggle with developing and implementing effective land ownership laws and regulations that balance the need for individual property rights with the needs of society as a whole. Moreover, land rights are often at the centre of conflicts over natural resources, economic development, and social inequality. Therefore, it is crucial to address the issue of property rights in land to ensure fair and equitable access to land resources for all members of society. In Malaysia, ownership pertains to the ability to exercise control over a given property, as Mohamad et al. (2013) outlined.

Zainal et al (2020) explained that the strata lease scheme in Medini, Johore, is often referred to as the "private lease scheme". However, concerns have been raised that purchasers under the private lease scheme assumed they do not have ownership rights, even though they are registered as lessees on the strata title, according to the (National House Buyer Association, 2021).

Chang (2020) stated that under the National Land Code [Act 828], a lease is not regarded as a proprietorship. This is because a lessee is merely granted the right of possession within the lease term, which does not qualify as being a property proprietor. According to Chang's (2020) views, the current law does not protect purchasers of a leased unit. The rights of parcel purchasers may have been suppressed due to the limitations of legislation in the Strata Titles Act 1985 and Strata Management Act 2013, as they are only buying interest in the property and are not considered proprietors (Chang, 2020). To explain further, a lease purchaser has no ownership rights to the property. Buying a private lease scheme unit is equivalent to renting or leasing it from the seller for a specified period, as the National House Buyer Association (2021) mentions. Purchasers must pay the lease consideration, which is the property's price (National House Buyer Association, 2021). Once the lease term expires, the strata unit must be returned to the original owner. Since the lease extension may depend on the lessor's discretion, there is no guarantee that the purchaser will retain the property, as Chang (2020) stated.

Methodology

For this qualitative research, interviews were used to collect data. Three respondents were handpicked based on their extensive experience and knowledge in land administration and development. Table 1 provides a brief description of the selected respondents.

Table 1
The description of the respondents

Code	Designation	Area of Expertise & Years of Experience
R1	Land Registrar	10 years of experience in the process of strata title insurance and lease registration on strata lease schemes in a northern state of Malaysia
R2	Land Administrator	16 years of experience in governing land development in a northern state of Malaysia
R3	Policymaker	21 years of experience in land law and recognised as the subject matter expert land matter at the Federal Government level

During the interviews, respondents were asked to share their views on property rights concerning owning strata lease units, considering their expertise in the leasing concept, strata lease scheme development, and strata title and land law. In a separate session, the respondents were presented with different legal statutes that pertain to property rights under Malaysian laws. They were given the chance to review and provide feedback on these statutes. The methodology employed for this study was thoughtfully designed to meet the study's objectives: ascertain the Malaysian laws that support property rights and evaluate their compatibility with the concept of developing the strata lease scheme.

Once the process of data collection was completed, thematic analysis was conducted to recognise the patterns and themes existing in the data. As a result, the study identified five

key themes that helped achieve the study objectives. These themes are elaborated further in the study findings.

Findings

The data acquired from the inputs of respondents R1, R2, and R3 were examined and classified into themes, as illustrated in paragraphs a, b, c, d, and e below. The themes were derived from the researchers' interpretation of the interview sessions.

a) Creating Strata Lease Scheme Through Registration

According to R1, a strata lease scheme comprises purchasers registered as lessees. R1 explains that an instrument of a lease, Form 15A of the National Land Code [Act 828], must be presented to the Land Registrar for registration. The instrument has to be registered so that a memorial of the lease is reflected in the strata title, said R1. A strata lease scheme only exists when a lease is registered onto a strata title, and lease registration involves all units in the scheme, R1 added. R1 further explains that the registered lessee may sell his strata unit to a new purchaser by transferring the balance lease term using an instrument Form 14A of Section 218(1), National Land Code [Act 828]. Registering the lease on the strata title is crucial to acknowledge the existence of the strata lease scheme and protect the lessee for the 99-year term. According to R1, the National Land Code [Act 828] follows the Torren system, meaning every land and parcel dealing is considered valid only after registration.

b) Indefeasibility of Registered Lease

R1 mentioned in Section 92(1), Section 92(2), and Section 340(1) in the National Land Code [Act 828] are crucial provisos to secure the rights of the strata lease scheme's purchaser. As explained by R1, Section 340(1) in the National Land Code [Act 828] clearly states that a registered lease on a title, including strata title, should not be challenged for its legality. Any party cannot revoke the registered lease of a strata title, R1 added. According to R2, Section 340(1) of the National Land Code [Act 828] explained that for those whose name is on any lease at the time being registered, this registered lessee is protected by law. R1 and R2 agreed that challenging the indefeasibility of the title may occur if the condition of Section 340(2) comes into the picture, where the instrument of lease presented is void, or when there is fraud to the registration.

c) Meeting The Requirements of The Constitution

According to R1, for the development of strata lease schemes to operate effectively within Malaysian law, they must adhere to the principles of property rights in the Malaysian Federal Constitution. R1 mentioned that the first principle is stated in Article 8(2) of the Federal Constitution, which ensures that all Malaysian citizens have the right to equality. This means there should be no discrimination against citizens regarding the law on the acquisition and disposal of property. This principle is further supported by Article 13(1) of the Federal Constitution, which guarantees that no citizen's property can be dispossessed or deprived of ownership. When the government must acquire a property compulsorily, the owner must be given adequate compensation as stated in Article 13(2) of the Federal Constitution. R1 responded that the property rights principles under Article 8(2), Article 13(1) and Article 13(2) of the Malaysian Federal Constitution apply to all units purchased under the strata lease scheme, just like any other property owners.

R1 also clarified that the registered lease instrument Form 15A, National Land Code [Act 828], signed between the lessee and lessor, applies a similar principle of property rights to the purchaser of a strata lease scheme, in granting them possession rights to the purchased unit for 99 years. As mentioned by R1, a registered lease is indefeasible registration following Section 340(1), the National Land Code [Act 828]. R2 added to this statement, noting that Section 232(1)(a) of the National Land Code [Act 828] allows the purchaser (the registered lessee) to peacefully and quietly possess and enjoy the property without any interruption or disturbance from the lessor or any person claiming through or under the lessor, within the granted lease term.

d) Freehold vs. Leasehold

Many people misunderstand the terminology of freehold and leasehold titles, according to R1. Some mistakenly believe that the strata lease scheme comes from a strata title of a State leasehold title and not through the registration of the lease instrument, R1 added. The government owns leasehold lands, and the proprietor is granted a leasehold title for 99 years. Upon the expiration of the lease tenure, the land is returned to the State Authority.

Widely known to many, freehold titles are land titles with absolute ownership, without government intervention and to R3, this interpretation of freehold is incorrect and misleading. R3 stated that freehold implied the status of the land for an indefinite time. Importantly, freehold does not mean infinite ownership or title in perpetuity, as many presume. A freehold is not the opposite of a leasehold, said R3. As explained by R3, the opposite of leasehold is the title in perpetuity. "A title in perpetuity is metaphorically a title possession as long as the sun and moon shine", said R3. R3 added that the opposite of a freehold is a non-freehold or, in other words, a restricted hold.

According to R2, all titles, regardless of freehold land or leasehold land, are subjected to quit rent as prescribed under Section 93, the National Land Code [Act 828], whereas as for strata titles, they are also subjected to parcel rent as defined in Section 23B, the Strata Title Act 1985. R2 added that regardless of whether the land or strata parcel is a freehold or leasehold title, the title owners are bound to pay rent annually. If they fail to do so, the land or the strata parcel shall be forfeited to the State Authority. However, the forfeiting of land or parcel due to an errant in rent, however, does not come in a simple step said R2.

e) No Absolute Ownerships

According to R2, absolute ownership does not exist in most legal systems since property owners are subject to certain limitations and regulations the government imposes. For example, property owners may have to pay taxes or obtain permits before modifying the property. If the government acquires the land where the property holds for public interest under the Land Acquisition Act 1960, the owner's rights to the property are removed with fair compensation. Therefore, it is essential to understand that while individuals may legally own a property or land, they must comply with regulations and limitations, added R2. Mohamad et al. (2013) studied property rights in the context of Islamic law and Malaysian law. They mentioned that while the law recognises the significance of property rights, it prioritises societal interests over individual interests. This implies that if the general public requires specific infrastructure that necessitates privately owned land, the landowner cannot withhold their land as the law considers public interest a valid reason.

In Malaysia, all titles, including land and strata, either freehold or state leasehold titles, are subject to rent that must be paid to the State Authority, as per R2's statement. Failure to

pay this rent can result in the forfeiting of the land or strata title. Since all land is subject to an annual land tax called quit rent, the State Authority can collect a land tax or quit rent from the landowner due to their land ownership (Adnan et al., 2021). If failed to comply with quit rent payment, the land and property on the said land shall be forfeited and reverted to the State Authority, explained R2. The procedures for collecting rent arrears for land titles can be found in Chapter Two, Part Six of the National Land Code [Act 828], specifically sections 97 through 100, which provide guidance (Adnan et al., 2021). Regarding the collection of rent arrears for strata titles, guidance can be found in Section 23A to Section 23P of Part IVA and Part IVB of the Strata Title Act 1985, explained by R2.

Property owners must also abide by the rules and regulations outlined in the National Land Code [Act 828] and the Strata Title Act 1985. Therefore, government intervention in owned property or land is always present, and the idea of absolute ownership without government intervention is unlikely, as per R2's viewpoint.

Discussion

The National Land Code [Act 828], the Strata Title Act 1985, the Strata Management Act 2013, the Federal Constitution, and the Land Acquisition Act 1960 are the laws in Malaysia that protect the rights to property for purchasers who purchase strata lease schemes. These laws apply to immovable property, the leased strata parcels with registrable interest reflected on the strata titles.

Understanding property rights in the strata lease scheme can be more meticulous than other property types. The purchasers should have a comprehensive knowledge of the lease concept under the National Land Code [Act 828] to better understand their position and rights in owning a strata lease scheme property. It is crucial that the dealing of a lease undertaken between the lessee and lessor of a strata lease scheme is registered to protect the interests of both parties. With the registered lease, the purchaser as lessee has the possession rights over the purchased strata unit without the intervention of the lessor during the 99 lease term, including the sub-purchaser of the strata lease scheme unit.

The strata lease scheme purchasers are often misrepresented as owners with no property rights. Leases are viewed as temporary ownership, which is not considered eternal proprietary. However, this perception is incorrect. Any property ownership comes from either a freehold title, a State leasehold title, or a memorial of lease reflected onto the title, making them the legal owner of the property. Nonetheless, any form of title ownership will never be absolute as it is subject to several legal provisions, such as the acquisition of land and strata parcel for public purposes under the Land Acquisition Act 1960 or the forfeiture of land or strata parcel due to rent arrears by the owner under the National Land Code [Act 828] and the Strata Title Act 1985. Governments have the power of eminent domain, an essential state privilege, making property proprietary, not absolute anywhere (Mohamad et al., 2013). To provide a concise overview, the fundamental concept of property rights for purchasers of strata lease schemes is illustrated in the diagram presented in Figure 1 below.

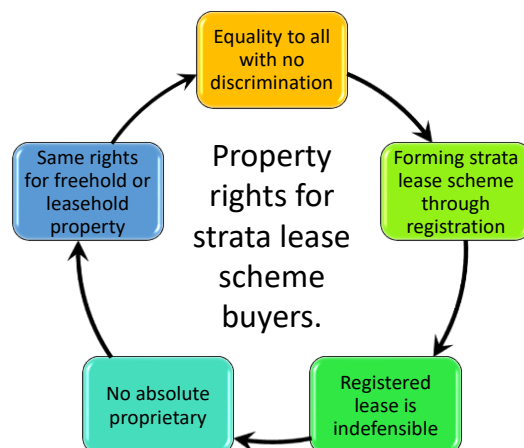


Figure 1. The Property Rights Principle in Strata Lease Scheme (Authors' elaboration)

Conclusion

This study has achieved its first objective of identifying Malaysian laws that uphold property rights to strata lease scheme purchasers. Malaysia's property laws are designed to protect the interests of property owners and provide a fair and efficient system for property transfer and management. These laws apply specifically to immovable property like land and strata parcels with registrable proprietorship and interest reflected on the land and strata titles. These regulations provide a complete legal structure to protect property rights, including ownership, possession, disposition, and use of the property. The legal system also offers remedies for property owners to seek justice in case of any infringement of their rights. Malaysia's property rights laws promote investment, foster economic growth, and support a stable and prosperous society.

Moreover, the study also looked at its second objective, whether these property rights laws support the notion of a strata lease scheme. Every Malaysian law must comply with the Federal Constitution, which includes equality for all citizens without discrimination, including the right to own property. However, property ownership is not absolute anywhere in the world. The governments have the power of eminent domain, an essential state privilege necessary for state sovereignty. This means that the government can take immovable property for public use, but the owner must receive just compensation for their loss. Whether the property is from a strata scheme or a strata lease scheme, property rights laws apply the same. In other words, whether the property is freehold, state leasehold, or acquired through a private lease agreement, all rights to these properties are lawfully protected.

Finally, the discourse surrounding the examination of property rights has been a topic explored by several notable scholars, including John Locke, Adam Smith, Karl Marx, Ronald Coase, Douglass North, Robert Nozick, Sanford Grossman, Oliver Hart, John Hardman Moore, David Schmidt, and many others. However, this particular study diverges from the theoretical perspective. Instead, it shifts its focus to the practical application of property rights and its laws in land registration, administration, and policy-making, specifically concerning developing strata lease schemes in Malaysia.

Acknowledgement

The authors sincerely thank the interviewees for their invaluable insights into the legal framework. Additionally, special recognition is extended to the anonymous referees who reviewed the paper.

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