The challenges in the implementation of development charge by Klang Municipal Council

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Abstract. Development charge imposed by the local authorities is important to provide and improve public facilities and infrastructure to the public in the local authority area. In practice, development charges have been imposed on property development carried out in accordance with the provisions of Section 32 of the Town and Country Planning Act 1976 (Act 172). However, there are many challenges faced by the local authority in the implementation of development charges. Hence, the aim of this research is to study and understand the process of development charges and the implementation of development charges by Klang Municipal Council, Selangor. A semi-structured interview was conducted with five (5) respondents from Klang Municipal Council and developers. An analysis is done based on the data obtained from relevant Acts, Manuals and interviews with personnel that is involved in the process. The findings of the study indicated that despite the challenges in implementing the development charges, Klang Municipal Council complied with the process and requirements of development charge as stated in the Town and Country Planning 1976.

1. Introduction

The implementation of development charge in the local authority is important to accommodate the allocation and enhancement of infrastructure and facility costs in the area as a result of planning approval. As outlined in section 32[1], the development charge will be undertaken on several important aspects pertaining to development. Among these is the conversion of land use category which is different from its original category. The increment of the category of land will indirectly increase the market value of the land. Secondly, the increase in density will clearly have a greater impact on the implementation of development charges. The increase in population density further enhances the activity and enhances the local community resource utilization. Further, the development charge is imposed in regard to the increase of plot ratio or floor area in respect of any land. An expansion of the plot ratio is subject to development charges as it will change the value of the land used for development purposes.

However, there are many challenges faced by the local authority to implement development charge in Malaysia [2]. Some of the problems identified are the payment method of the development charges, particularly the interest rate of instalment payment which seems inappropriate. In fact, there is an objection from developers due to different rate being charged as compared to other states which caused dissatisfaction among them. Sometimes the developers also do not want to pay development charges due to the percentage implemented is too high and create difficulty among the small companies or developers to pay the charges.

Furthermore, there is an inconsistency between local authorities in implementing the development charges. According to [1], the collection of development charges needs to be deposited into developer
special account known as “Tabung Caj Pemajuan” and will be used by the local authorities to improve public facilities and upgrading the area. However, there are states that just used 40% of the amount paid to deposit into the “Tabung Caj Pemajuan” while the balance is used as a consolidated fund to accommodate the cost of other management in local authorities. Hence, it is important to study and understand the procedures, statutory requirements of the development charge in the study area, i.e. Klang Municipal Council in Selangor.

2. Literature Review

2.1 Development control and development charge in Malaysia

The understanding of the key aspects of development control which includes the development requirements, the submission and approval process and procedures, land matters and legal matters, is important for the development charge. According to Section 2 (1) [1], development control is defined as “the carrying out of any building, engineering, mining, industrial, or other similar operation in, on, over, or under land, the making of any material change in the use of any land or building or any part thereof, or the subdivision or amalgamation of lands; and “develop” shall be construed accordingly”. Generally, development charge means a payment that is levied upon the property owner or developer by the local planning authority for planning approval that involves an increase in land values as a result of the change of land value, additional floor space and density [1]. The laws, procedures and guidelines pertaining to the land and property development process in Malaysia are quite extensive. Some of the main written land policies and laws to guide the land development activities as derived from [3] an Act to amend and consolidate, ensuring uniformity of law and policy relating to land and land tenure, and [1] which contains planning and related development regulations. The rules for the use of development charges have been implemented since 1970 in accordance with the application of the 1970 Emergency No.46 (Power Requirements) Ordinance. It is also stated in the Federal Territory (Planning) Act [4].

2.2. Category of development charge

The implementation of development charges in the Klang Municipal Council is divided into three categories which are also set out in section 32 [1] (Table 1). These categories refer to few factors related to development particularly change in land and value. If the changes do not affect the stated conditions, then the development charge will not be imposed on any development undertaken.

| Category | Types of development | Method | Related department                      |
|----------|----------------------|--------|-----------------------------------------|
| Enhanced land value | Change of land use | Comparison method | Valuation and Property Management department |
| | Increase of density | Residual method | |
| | Excess floor area | Direct calculation | Planning development and building control department |
| | Excess of development units | | |
| Density | New residential area | Direct calculation | Planning development and building control department |

Source: Klang Municipal Council, 2018

2.3. Legislative provisions of development charge

Besides section 32 until section 35 [1], the legislative provisions that governed the development charge in Peninsular Malaysia are section 40(1) until 40(3) [4] as follows;

Section 40(1) – where a local plan or an amendment of a local plan effect a change of use, density, plot ratio or floor area in respect of any land so as to enhance the value of the land, a development charge at the prescribed rates shall be levied in respect of any development of the land commenced, undertaken, or carried out in accordance with the change.
Section 40(2) – without prejudice to the subsection (1), a development charge at such rates as may be prescribed shall also be levied by the commissioner where the development order granting planning permission in respect of a development is subject to
a) A condition that such development may be carried out only if spaces for the car parking are provided in such manner and to such extent as specified in the development order; and
b) A further condition that the commissioner may accept payment of development charge at the prescribed rates in lieu of the provision of the spaces for the car parking

Section 40(3) – the development charge referred to in subsections (1) and (2) may, in the discretion of the commissioner, be levied on
a) The owner of the land which the development charge relates; or
b) The person who carries out the development in respect of which the development charges relates.

According to [2], Act 172 and Act 267 is important to guide local authority to implement development charges (Table 2).

| Table 2. Sections related to development charge |
|-----------------------------------------------|
| **Town and Country Planning act 1976 (Act 172)** | **Federal Territory (Planning) Act 1982 (Act 267)** |
| Section 32: Authorize the imposition of a fee for the development of the affected by the change as the local plan. Changes include the use, density or floor area increasing the value of the land. | Section 40(1): Explains that the rate of development charges will be imposed when a local plan, changes of use, density, plot ratio or floor area concerned. |
| Section 33: State that planning permission is issued before the local planning authority should examine the development of the change and, if applicable, the notice will be issued for developers’ information. The amounts determined by the local planning officials are final and cannot be changed. | Section 40 (2)(b): Noted that a further condition that the Commissioner may accept payment of development charges at the rate prescribe in place of the provision for available parking spaces. |
| Section 34: Payment charges shall be made at the same times, however, subject to local authorities to allow payment in instalments and all money paid will be collected in the fund of local authorities. | Section 41(3): Provides power to the mayor for modification at any time to an order granting planning permission for any development. |
| Section 35: Allows the state authority to make rules for implementation and enforcement in their respective states. | |

Source: Act 172 and Act 267

The development charge in Selangor is also governed by *Kaedah-Kaedah Caj Pemajuan 2010* which is published under Government of Selangor Gazette [5].

Besides Malaysia, development charges are also applied in other countries, for example, British Columbia, Canada. According to British Clombia (2000), the development charge or known as Development Cost Charges (DCCs) in Canada are monies that are collected from land developers by a municipality, to offset some of the infrastructure expenditures incurred, and to service the needs of new development. The DCC is imposed by bylaw according to the Local Government Act, the charges are intended to facilitate development by providing a method to finance capital projects related to roads, drainage, sewers, water and parkland. However, the local governments are provided considerable flexibility in establishing DCCs. Some of the important application of DCCs in British Columbia is to facilitate charges imposed on a density gradient for residential land use, for commercial and institutional
land uses, DCCs should be established on a floor space basis; and, and for industrial land use, DCCs should be established on a gross site area basis (ibid.).

3. Research Methodology
This study used in-depth interview method and content analysis to investigate the process of development charge and its implementation in the Klang Municipal Council [6]. This local authority was selected as a case study because it is among the best authority in implementing development charge in Malaysia.

3.1. Semi Structured Interview
In order to obtain the related information to this study, the semi-structured interview was conducted with 5 representatives from the Klang Municipal Council [6] and developers (Table 3).

| No | Department | Designation | Experience |
|----|------------|-------------|------------|
| 1  | Valuation and Property Management | Officer | 7 Years |
| 2  | Planning | Officer | 9 Years |
| 3  | Developer | NBC Group Sdn Bhd | 14 Years |
| 4  | Developer | Harp Soon Group | 8 Years |
| 5  | Developer | Sastama Sdn Bhd | 7 Years |

3.2. Content Analysis
Content analysis was used as the primary analysis technique of the collected data. This technique extracted and categorized information from documents that provides new insights increases a researcher’s understanding of particular phenomena, or informs practical actions. In this study, the analysis was conducted by extracting the secondary data obtained from data collection, i.e. mainly from the laws, acts, and submission checklists (Table 4).

| No | Matter | Content |
|----|--------|---------|
| 1  | Land Matters | NLC 1965, land title, category |
| 2  | Planning Matters | Act 172, development charges |
| 3  | Development Requirements | Manual Garis Panduan Dan PiawaianNegeri Selangor Edisi 3 2016 |

4. Findings
As mentioned earlier, the key elements that are analyzed in the study is the process of development charge and its implementation in the Klang Municipal Council.

4.1. Process of development charges
After reviewing process of planning application, the developer will be informed on the imposing of development charge or not. If the developer is imposed with the charge, they need to make payment and necessary actions as specified in the section 32 [1]. The authority will also inform the concerned parties the amount of payment of development charge if the development is undertaken. The developer shall state whether the total development charge exceeds or less than 100 thousand then the developer must fill in the Second Schedule of Form A. The payment for more than 100 thousand can be made in instalments whilst less than 100 thousand must be paid in lump sum. The findings showed that the implementation of the development charge at the Klang Municipal Council is accordance to the Act 172. The process of compliance is also followed and adhered to.
Moreover, the officers in the Klang Municipal Council claimed that the departments do not have any problem on the management of the development charges. However, the developers stated that the operational system of development charge was difficult to comply with. According to the officer from the Valuation and Property Management Department, the implementation of development charge is acceptable by most of the developers and only few were not fully cooperated and pay for the development charge. In order to overcome this issues, local authorities will give an option to the developer to pay by instalments if the charges are too high.

4.2. The implementation of development charges

The results of the interviews showed that the development charge has caused some problems to the local authorities that may lead to the failure of its implementation as follows:

4.2.1. Delayed in planning permissions approval. Development charges will cause delays or suspensions of planning permission. This is due to the ineffective and inefficiency of the officers to process the development charge. Some of the developers preferred to pay the development charge by instalment that will make the planning approval is not granted until full payment has been made. In fact, officer in Klang Municipal Council claimed that the developer intentionally did not pay the development charge in the early stages as a sign of objection to the amount of charges imposed on them. As such, local authorities will issue a reminder notice to the developer to remand for them to pay the development charges. If the developer fails to clarify the amount of the charge charged, legal action will be taken and charged for the procedure. This action is due to the fact that the developer fails to comply with the Town and Country Planning Act 1976, which states in more detail the implementation of development charges, Act 172 of section 32 - 34 and the action to be taken on the offending party.

4.2.2 The high rate of charge. The percentage rate used by [6] is the percentage rate that has been set by the Selangor State Government which is a 30 per cent imposition. The use of the percentage rate for this forwarding charge is imposed since the beginning of the year under development charges in Klang district. Hence, the Klang Municipal Council receives the best local authority award in its implementation system. As such, this percentage rate continues to be applied to implement the development charges according to the provisions of the Selangor State Government.

Some of the respondents do not agree on the rate of a development charge, but some of them agreed and the others do not have a choice and just pay for the development charges as to follow the state rules of law. The impact of the 30 per cent percentage rate implementation raises concerns among developers, therefore, the developers are forced to create a strategy of marketing to avoid having a huge loss. What matters this caused the developers to increase the price of the house sold to the buyer. According to the officer from the Planning Department, the rate set by the State Government is based on the development and value of current land for the State of Selangor. With the implementation of a high percentage rate also affects the interest of developers to carry out development.

4.2.3 Lack of awareness. Most of the developers charged with the development charge received a reminder notice to pay the charging charges. This is due to the lack of awareness among the developers on the importance to pay the development charge on time. However, some developers pay in instalments. This is because the amount charged is exceeding 100 thousand and above. As such, the developer pays 50 per cent at the start but forgot to pay the remaining 50 per cent to the local authorities. Hence, such developers will also be given notice of remedies to settle the charges imposed on them to avoid legal action taken.

4.2.4 The weakness of the operational system. The findings showed that the weakness of the operating system in managing the problems associated with the development charge caused by an attitude towards the importance of implementing development charges. There were officers from the local authority who involved in processing the development charges not really understand the process in relation to development control and its legislations. Further, there is no site or application that facilitates the payment process between the developer and the local authority. This issue of the operating system will cause the failure of the implementation of development charges.
5. Recommendations and Conclusions

Based on the findings, few recommendations are proposed to provide better and more effective changes to the implementation of the development charge in Klang Municipal Council. The recommendations are as follows:

5.1. Standard timeline

An appropriate timeline is needed as a guide to the development charge process. This is due to the problem of delayed in planning permissions approval. With a standard timeline, the review and evaluation process of development charge can be carried out simultaneously and will indirectly reduce the time for planning permission approval.

5.2. Create awareness among the developers.

The local authority needs to play an important role to inform and create awareness among the developers on the importance of development charge. Thus, development charges are a collection system as a result of the development charges imposed on any developer undertaking the development of an area. By keeping abreast of current developments that have grown rapidly, the implementation of development charges can provide fund for the authority to upgrade and improve service and infrastructure in the area.

5.3. Improve the operational system.

By implementing the 'Coding Number' that will represent the registered developers will further simplify the notification process, reminder process and payment process to developers involved in the implementation of the development charge. With the coding number, the management at the Local Authority will be more careful and will not overlook anything to deal with the development charges. This recommendation will also improve awareness among developers as they need to check and update the information provided in the coding number system provided. Moreover, the coding number provided by the local authority to the developers will not expire and can be continuously use for the next development if the developers still need to pay the development charge. Most of the developers claimed that the development charges create burdens to them in terms of processing fees and rates collection. Therefore, the proposed coding system will improve the collection system and the process will become more efficient and easier by saving time and simplifies the process.

As a conclusion, Klang Municipal Council being the local authority of Klang is the administrator of the development control application. Despite the challenges faced by the Klang Municipal Council to implement the development charge, it is recognized that the development charges were implemented and complied with the Town and Country Planning 1976. In fact, Klang Municipal Council is known as one of the best local authority that implement the development charges. The authority's effort towards the implementation of the development charge can also be seen from the improvement of its process from time to time. Therefore, the implementation of development charges as implemented by Selangor, specifically Klang Municipal Council should be emulated by other states.

6. References

[1] Laws of Malaysia 2016 *Town and Country Planning Act 1976 (Act172)*. Kuala Lumpur: Percetakan Nasional Nasional Malaysia Berhad.
[2] Nor Azalina, A.R., Mudirah, S., Nurulhuda, A., Siti Fairuz, C.P. 2017. Implementation of development charge by local government of Malaysia: Implementation and challenges. 2017 *Environment-Behaviour Proceeding Journal*, 2 459-467.
[3] Laws of Malaysia 2016 *National Land Code 1965 (Act56)* Kuala Lumpur: Percetakan Nasional Malaysia Berhad.
[4] Laws of Malaysia 2010 *Federal Territory (Planning) Act 1982 (Act 267)* Kuala Lumpur: Percetakan Nasional Malaysia Berhad.
[5] Government of Selangor Gazette 2010. *Kaedah-kaedah Caj Pemajuan*.
[6] Klang City Council 2018 *Klang Local Plan (Amendment 1)* Selangor: Klang City Council.
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