

KEYNOTE ADDRESS ENTITLED

**“LOCAL GOVERNMENTS AND NATION BUILDING TOWARDS
SUSTAINABILITY AND PROGRESS”**

DELIVERED BY

**THE RIGHT HONOURABLE THE CHIEF JUSTICE OF MALAYSIA,
TUN TENGGU MAIMUN BINTI TUAN MAT**

ON THE OCCASION OF

**THE NATIONAL CONFERENCE ON LOCAL GOVERNMENT LAWS
2023**

“NAVIGATING CHALLENGES, SUSTAINING THE FUTURE”

M RESORT & HOTEL KUALA LUMPUR, 20 SEPTEMBER 2023

SALUTATIONS

- (1) YB Tuan Haji Akmal Nasrullah bin Mohd Nasir,
Deputy Minister of Ministry of Local Government Development;
- (2) Honourable Judges of the Federal Court, Court of Appeal, High Court and Judicial Commissioners;
- (3) Ms Karen Cheah Yee Lynn,
President of the Malaysian Bar;
- (4) Top Management of CLJ;

(5) Mayors, Presidents, local authorities, distinguished speakers, guests;

(6) Ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuh and a very good morning to all of you.

INTRODUCTION

[1] It is both an honour and a privilege of mine to be invited to deliver this keynote address on the occasion of the National Conference on Local Government Laws 2023. Very often I am invited to attend or speak at conferences which focus mostly on areas such as constitutional law, criminal law, civil law or even alternative dispute resolution.

[2] It is not often that there is a conference on the very important topic of local government. I must commend CLJ Malaysia for their effort of convening this pivotal conference.

[3] Local governments are the closest to the people as they play the vital role of educating, mobilising and responding to the public in advancing sustainable development. As such, even if local governments are technically the lowest in the hierarchy of power, they are not any less significant. I therefore take the view that the central theme assigned to my keynote address, that is: 'Local Governments and Nation Building Towards Sustainability and Progress', quite neatly encapsulates the immense significance of the role of local government.

[4] In the time that I have, I would like to address three key areas, which are:

- i. Firstly, the constitutional and legal basis for local government;
- ii. Secondly, the role that local government plays; and

- iii. Thirdly, and perhaps more aligned to my own constitutional functions, the role of the Judiciary as relates to the first two areas I just mentioned.

CONSTITUTIONAL AND LEGAL FRAMEWORK FOR LOCAL GOVERNMENTS

[5] The Federal Constitution does not only demarcate between the three major branches of government, to wit, the Executive, the Legislature and the Judiciary, but it also separates these branches into their various sub-branches. In terms of the Executive branch, at the highest is the Federal Government, followed by the State Governments and then local governments which all answer mostly to their respective State Governments.

[6] Then within local government, there are four categories, namely:¹

- i. City Council (Majlis Bandaraya) or City Hall (Dewan Bandaraya);²
- ii. Municipal Council (Majlis Perbandaran);³
- iii. District Council (Majlis Daerah); and⁴

¹'Category of Local Authority' (*Local Government Department*, 3 June 2008) <<https://jkt.kpkt.gov.my/index.php/en/local-government/pbt/category-local-authority>>

² A local government that governs a large city, typically a state capital. It has a minimum population of 500,000 and an annual income of more than RM100 million.

³ A local government that administers an urban area or town. It has a minimum population of 150,000 with an annual income of not less than RM20 million.

⁴ A local government that governs a rural area. It has a population of not more than 150,000 and an annual income of less than RM20 million.

iv. Special or modified local government.⁵

[7] Though I have said that local governments are answerable to their State Governments, the Federal Constitution does nonetheless enable the Federal Government to wield considerable influence over the operations of local governments. For instance, Article 76(4) of the Federal Constitution empowers Parliament to make laws with respect to local governments for the purpose of ensuring uniformity of law and policy among states. In that regard, for the purpose of uniformity, Parliament has enacted various laws.⁶

[8] At the Cabinet level, Article 94(3) of the Federal Constitution empowers the Federal Government to form a ministry dedicated to local government affairs. Leveraging on this provision, the Ministry of Housing and Local Government was established and entrusted with the crucial responsibility of strategizing, monitoring and implementing all policies associated with local governments throughout Malaysia.

ROLE OF LOCAL GOVERNMENT IN ADVANCING SUSTAINABLE DEVELOPMENT

[9] Having addressed the basis for their existence, what are they intended to do?

[10] Local government among other things, prescribe and monitor health and hygiene standards, sanitation, provide public amenities and manage the overall well-being of their constituents. They do this mostly

⁵ A body empowered by the State Government to discharge the functions of a local government. Examples include Putrajaya Incorporated and Tioman Development Authority.

⁶ See for example: Local Government Act 1976 [Act 171]; Street, Drainage & Building Act 1974 [Act 133]; and Town & Country Planning Act 1976.

by issuing by-laws, a significant power granted to them by the Local Government Act 1976. They also have officers in their employ who enforce these by-laws and any other applicable laws.

[11] Another fundamental facet of their role is town planning and development which is to be balanced with preservation and public comfort. The mantra that resonates at all levels in this regard is sustainable development – a concept which epitomises the notion of progress without compromising the needs of future generations.

[12] The roles that I have outlined are not unique to local governments in Malaysia only. They are applicable to many other countries throughout the ages. Local governments embody the idea of community and this, in my view, also resonates with many religious teachings – including of course sustainable growth.

[13] Islam for instance, emphasise a holistic approach to urban development. In this context, Surah Ar-Rum, Verse 41 of the Qur'an conveys a profound message on the interconnectedness of human actions and their consequences.⁷ It highlights how corruption manifests on the land and sea due to the actions of humans, leading them to a taste of the repercussions they have wrought. In the realm of urbanisation, this verse translates to a call for responsible and thoughtful town planning to prevent environmental degradation and to promote the well-being of present and future generations.

⁷ Al-Qur'an (Surah Ar-Rum, 30:41) "*Corruption has appeared throughout the land and sea by [reason of] what the hands of people have earned so He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness].*"

[14] A clear example of town planning based on the principles outlined in the Qur'an is the city of Madinah, which was developed by Prophet Muhammad SAW in the 7th century C.E. The layout of Madinah reflects Islam's emphasis on community and social cohesion. At the heart of the city lies the Prophet's Mosque, which serves as a spiritual and communal focal point. The residential, commercial and public spaces in Madinah are also seamlessly integrated to foster vibrant social interactions and communal ties. Rooted in Islamic values, the town planning of Madinah serves as an enduring testament to harmonious and balanced urban development.

[15] International frameworks have consistently recognised the crucial significance of sustainable development. In 1992, the United Nations Conference on Environment and Development, also known as the Earth Summit, culminated in the adoption of the landmark Rio Declaration. This declaration sets out 27 core principles that provide a broad framework for harmonising economic development with environmental preservation. The Earth Summit also established Agenda 21, which is a comprehensive plan of action outlining specific strategies to implement the principles set out in the Rio Declaration. Crucially, Agenda 21 emphasises the participation of local governments to holistically address social, economic and environmental needs towards achieving a sustainable future locally and globally.

[16] Another crucial aspect of the powers possessed by local government is their wide discretion in town planning and development control. They not only grant planning permissions, but are also permitted to impose any conditions to those plans if deemed necessary.

[17] The initial stage of the planning process involves the creation of a structure plan by the State Government. This plan outlines the State's strategies and proposals concerning land use, encompassing objectives such as economic growth, socio-economic welfare and sustainable development. And since public involvement is a large facet of this process, the structure plan is required to be publicised for public feedback.

[18] Once the structure plan is officially gazetted, it gains the authority of subsidiary legislation. As a result, any development order that contradicts it is deemed invalid. This ensures that the structure plan, once instituted, serves as the definitive guide for the development of the area. In fact, the law is strict on this as any modifications to a gazetted plan must also require public participation.

[19] Local plans, on the other hand, provide a detailed implementation strategy based on the overarching structure plan, which includes environmental conservation measures. Local planning authorities prepare local plans in alignment with the State's structure plan. Local plans receive an equivalent amount of publicity as structure plans, ensuring that potential stakeholders are informed and can contribute feedback. And the law requires that land or building use adhere to the local plan.

[20] Given their significance, the structure and local plans then form the basis upon which all planning permissions are decided. The foundation of the planning system in our jurisdiction is the general rule that no development can be commenced, undertaken or carried out without the

prior consent of the local planning authority, which is granted in the form of planning permission.⁸

[21] Given what I have stated thus far, we can appreciate that local governments in Malaysia carry a heavy duty as their decisions immediately affect the public for generations to come. Attendant to this wide-ranging power is the responsibility to exercise such powers within permissible legal limits. And, whether or not these limits are respected is a question for the Judiciary.

[22] This brings me to the final aspect of my speech on judicial scrutiny particularly in respect of local government and how, in my view, this affects sustainable nation building.

JUDICIAL SCRUTINY OVER LOCAL GOVERNMENTAL ACTIONS

[23] Judicial review, which comprises constitutional and administrative judicial review is a cornerstone of our constitutional framework. It is the main device by which the Judiciary performs its constitutional duty to check and balance power.

[24] This does not mean that the Courts or individual Judges are now also town and country planners. What it means is that judicial review empowers our Courts to scrutinise the decisions, actions and policies of local governments, ensuring that they remain within the confines of the law. It is not for us judges to exercise these powers for local government but only to ensure that the exercise of these powers is done correctly and legally.

⁸ Town and Country Planning Act 1976 [Act 172], sections 19(1) and 21(1).

[25] When local governments, just like any other executive arm, exceed their powers or violate the rights of citizens, the Courts are dutybound to intervene, nullify unlawful actions and provide remedies to affected parties. This process is essential for preventing abuse of power, promoting transparency and holding local governments accountable for their actions. This is of course done based on established principles and judicial precedent.

[26] Speaking specifically within the context of local government, in a typical case, the Courts are called upon to scrutinise and assess whether a local government's decisions to approve proposed developments fall within the bounds of environmental preservation or generally compliant with legal principles. I would like to refer to two recent decisions of the Federal Court to illustrate my point.

[27] Earlier this year the Federal Court rendered judgment in the *Sunrise Garden* case.⁹ The central issue in this case revolved around the validity of planning permission granted by a local planning authority in Penang in 2012 for the construction of a housing development project on hillside land.

[28] Of crucial relevance was the fact that the Penang Structure Plan contained a general prohibition against development on hill slopes. However, the State Planning Committee, without following the requisite statutory procedure to make alterations to the structure plan, issued a set of guidelines defining the exceptions to the prohibition against

⁹ *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] 2 MLJ 621 (FC) ('Sunrise Garden').

hillside development as set out in the structure plan. The disputed planning permission was granted by the local planning authority on the basis that the proposed development fell under one of the exceptions defined in the guidelines.

[29] The Federal Court held that the issuance of these guidelines amounted to an alteration of the structure plan in contravention of the relevant provisions of the Town and Country Planning Act 1976, which require that any such alteration to a gazetted structure plan must go through the process of public participation. And it followed that the State Planning Committee had acted ultra vires its powers under the Town and Country Planning Act 1976 in implementing these guidelines.

[30] The Federal Court also noted that the State Planning Committee cannot bypass the mandatory legal requirement of requesting prior advice from the National Physical Planning Council in respect of an application for planning permission that involves development affecting hill tops or hill slopes in an environmentally sensitive area. This is to ensure that “it is sustainable development and not any development that is granted planning permission in relation to hill lands”.¹⁰

[31] The Federal Court further noted that no local plan was drawn up following the gazetting of the Penang Structure Plan 2020 in 2007, notwithstanding the express requirement under the Town and Country Planning Act 1976 for work on a local plan to commence before or soon after the structure plan for the State comes into effect. In this case, the local planning authority had instead treated the zoning plan as a local plan for the purpose of granting the disputed planning permission.

¹⁰ *Sunrise Garden*, [181].

[32] The Federal Court found that the zoning plan was not, in any way, equivalent in nature, substance or effect to a local plan required by statute. Unlike the preparation of a local plan, there was no element of public participation in the drafting of the zoning plan. This essentially ousted the public's role in influencing and controlling the development taking place in their area. As such, the local planning authority's attempt to accord the zoning plan the same status as a local plan was held to be in contravention of the Town and Country Planning Act 1976.

[33] In my view, *Sunrise Garden* is an apt example of a case where the Judiciary exercised its powers of review with a view to enforcing legal compliance. The case also highlights the role of structure and local plans which the Courts will not allow to be sidestepped. In this regard, the Judiciary also reemphasised the need to adhere to environmental protection measures meticulously outlined in the development plans which echo public sentiment. I think that this is especially pertinent when it comes to delicate areas like hill land and steep slopes where the environmental impact can be catastrophic.

[34] The second decision, which in my opinion is a landmark development in the law generally and local government specifically is the judgment of the Federal Court in the *Taman Rimba Kiara* case – especially insofar as locus standi is concerned.¹¹

[35] As you well know, locus standi refers to the legal standing or right of an individual or entity to bring a case before the Court. In the context

¹¹ *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ 829 (FC) ('Taman Rimba Kiara case').

of judicial review, it determines whether an individual or entity is qualified to commence proceedings to challenge the legality of a public authority's action, decision or policy.

[36] Historically, Malaysian Courts have adopted a narrower and more restrictive approach on the issue of locus standi in judicial review cases which limit who could bring public interest litigation. In the context of local government law, the ramifications of this are significant given that decisions made in this area of the law affect a wide range of people, albeit in different degrees.

[37] In *Taman Rimba Kiara*, the facts concerned the grant of a development order in 2017 by the Datuk Bandar of Kuala Lumpur, as the local planning authority of Kuala Lumpur, in respect of a proposed development located within a public park known as Taman Rimba Kiara. Taman Rimba Kiara was a public park measuring 25.2 acres located within the Taman Tun Dr Ismail and Bukit Kiara areas. The Kuala Lumpur Structure Plan 2020 ('the Structure Plan'), which had come into force in 2004 zoned the area comprising Taman Rimba Kiara as a green open space. However, the Kuala Lumpur Local Plan had gazetted the subject land as 'mixed development'.

[38] Based on the local plan, the Datuk Bandar of Kuala Lumpur had granted the development order. And this was done despite the respondents' objections regarding the proposed development. A judicial review application was initiated by the respondents to quash the grant of the development order on the grounds that it contravened the Structure Plan.

[39] One interesting feature of this case is that the respondents in the appeal comprised neighbouring residents and property owners prompting, among other things, an objection against their locus standi to initiate the judicial review. Other issues raised before the Federal Court included whether the Structure Plan was a legally binding document with which compliance is mandatory and also whether a planning authority, in deciding to issue a development order is under a duty at common law to give any or any adequate reasons for its decision to persons objecting to the grant of the development order.

[40] On the locus standi point, the Federal Court departed from the majority decision of the then Supreme Court in *Lim Kit Siang* on the basis that it is no longer good law.¹² The Federal Court instead endorsed the minority view of Abdoollader SCJ in *Lim Kit Siang*, advocating for a broad and flexible approach towards locus standi in judicial review cases.

[41] The Federal Court held that it is not necessary for an applicant to establish an infringement of a private law right or the suffering of special damage. Rather, it is sufficient that the applicant is able to demonstrate that he is “adversely affected” by the subject matter of the judicial review, in that he has a real and genuine interest in the matter. In my respectful view, this is a welcome departure and in line with the spirit of local government laws which emphasise the need for public involvement. To my mind, public involvement must also entail enhanced public scrutiny.

[42] In relation to the issue of non-conformity with the Structure Plan, the apex Court held that the development order had significantly departed from the said Structure Plan. Most pertinently, the land in

¹² *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (SC) ('Lim Kit Siang').

question had already been designated in the Structure Plan as a green area or open space for public use and so the subsequent development order for mixed development (without a requisite change to the Structure Plan) was unlawful. The Federal Court accordingly found the development order to be null and void, and quashed the same. This in my view, is an important aspect of the case underscoring the importance of structure plans and thereby upholding the purpose of local government laws.

[43] In *Taman Rimba Kiara*, the Federal Court also went a step further by emphasising the duty of a local planning authority to give reasons for its decision to persons objecting to the grant of planning permission even though an express requirement to give reasons is absent in the applicable statute. The existence of the duty to give reasons was grounded on the special circumstances of this case where the grant of planning permission had departed from the Structure Plan which the Court suggested had created a situation which necessitated the giving of reasons.

[44] The law is very clear that local governments must act transparently and openly which in my view, is geared towards sustainable progress. The two recent Federal Court cases indicate how the Judiciary plays its role to ensure that the spirit of the applicable laws is not lost.

[45] Insofar as the Federal Constitution and the law are concerned, the existence of the Judiciary and the judicial process serves as a reminder that no power is unfettered. These laws and their requirement of public involvement and detailed processes, are targeted at ensuring that we do not just develop but develop sustainably. There will be times where

provisions of the law are stretched giving rise to litigation. And in such cases, the Judiciary plays the important part of checking and balancing such exercise of power.

[46] With this assurance, we can collectively continue our journey towards sustainability and progress, knowing that the Rule of Law underpins our nation's development and future.

CONCLUSION

[47] In closing, I would like to reiterate that local government, particularly in their capacity as local planning authorities, bear the unenviable responsibility of shaping the path of our communities towards sustainable development. I have perused the program brochure and if anything, the importance of this subject is made apparent by the many important topics to be discussed by the many eminent speakers who are lined up.

[48] With that, I thank you for your time and attention and wish you a fruitful conference.

Thank you.