

**Local Authorities and Environmental Management in the
Klang Basin: An Assessment of Local Authority
By-laws**

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INTRODUCTION

Local authorities is free to decide in matters which it is authorised to do by statute. Allocation of funds and prescription of how those functions are carried out are determined by Parliament and State Legislative. Local authorities play a vital role in the management of the environment in that it compliments the work carried out by federal agencies. Many government agencies such as the Department of Environment (DOE), Drainage and Irrigation Department (DID) and Department of Water Works (JBA) have legislative powers in addressing environmental matters. However, these agencies usually lack the manpower to carry out effective enforcement (Jamaluddin 1997). Thus, local governments are looked upon as additional assistance in environmental management particularly as they also have legal powers to carry out enforcement. This research focuses on local government by-laws in the Klang Basin. The research assesses local government by-laws and related federal legislation for local government in environmental management. The main aim of the research is to assess whether the provisions available to local authorities are either adequate or inadequate to address environmental problems for a Basin which is experiencing the most rapid rate of development in Malaysia. The study is funded by IRPA mechanism under the Integrated Approach to Urban Ecosystem Management Project 08-02-02-0002.

*ADMINISTRATION OF LOCAL GOVERNMENT IN THE
RESEARCH AREA*

There are 7 local authorities which fall within the Klang Basin boundary. These are Kuala Lumpur City Hall (DBKL), the Municipal Councils of Petaling Jaya (MPPJ), Shah Alam (MPSA), Subang Jaya (MPSJ), Klang (MPK), Selayang (MPS), and Ampang Jaya (MPAJ). Although DBKL falls within the Klang Basin, it is not included in this paper because of its unique position as a Federal Territory, thus making it different from other local authorities selected for the study. There have been some changes to the structure of local government in the Basin during the course of the research period. The Municipal Council of Subang Jaya was established to cover the administration of the District Council of Petaling in December 1996, and the District Council of Gombak was integrated with the District Council of Selayang under the new Municipal Council of Selayang in early 1997.

Methodology

By-laws were obtained from each local authority in the research area. These were compiled to set up a complete database of by-laws and federal legislation available to the local authorities related to environmental management. The preliminary results were achieved by assessing the by-laws and local authority Annual Reports. Local authority legal officers were also interviewed to obtain in-depth information regarding the day-to-day management functions. The study was carried out over a period of 4 months between August and December 1996.

DIFFERENCES BETWEEN DISTRICT COUNCILS AND MUNICIPAL COUNCILS

Local authorities in Malaysia are given powers under the Local Government Act 1976 to carry out their functions. Basically, their functions cover 5 categories which are;

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|---------------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Environment | - | provision of parks, gardens, planning activities, conservation of physical features such as rivers, streams, tress, prevention of air, water and land pollution. |
| Personal | - | Provision of housing <u>and</u> other infrastructure. |
| Recreational | - | Provision for social infrastructure such as buildings for youth clubs, playgrounds, libraries. |
| Commercial | - | Construction, upkeep of markets, stalls and shophouses and |
| Protective | - | Consumer protection, licensing, prevention of diseases of animals. (Modified from Yahya 1987). |

However, before the preliminary results are presented, there is a need to explain about the differences between a District and Municipal Council in terms of its administration and the decision making process. A District Council is headed by a District Officer (*Pegawai Daerah*) who deals mostly with land matters, and a Municipal Council has a Councillor (*Yang Dipertua*), who is appointed by the State Government. A Municipal Council is more independent in the sense that decisions regarding the development of the area are not subject to total federal authority involvement. For example, when MPPJ decides to build a new road, the contract can be employed to private contractors. However, MPPJ is required to seek the advice and approval from the Water Board if the road works is expected to affect water supply in the affected area. In the majority of cases, a Municipal

Council will refer to the relevant federal agency *related to utility services* for approval. This is because utility services such as water and electricity supply do not fall under the jurisdiction of local authorities. Approval is usually obtained with little difficulty.

Although a District Council is similar to that of a Municipal Council in terms of functions, the involvement of State and Federal authorities more prominent in their administration. This is because many District Councils (which is usually smaller in size than a Municipal Council) do not have the relevant expertise such as engineers and planners. Thus, the technical 'know-how' is limited. Also, the scope of operations for a District Council is narrower than that of a Municipal Council, as it is mainly restricted mainly to the administration of land. Thus, a District Council has to have the relevant federal agency to be involved in their projects. For example, when a District Council decides to build a road, the Public Works Department (Jabatan Kerja Raya) has to be involved from the initial stage of planning right through to the completion of the project.

A District Council will apply to the State Government to be 'promoted' to a Municipal Council when it feels that the local development rate and population growth have increased. It has to prepare a Working Paper which will be considered by the State Government who will assess whether the District Council qualifies to be a Municipal Council. Being a Municipal Council provides more flexibility in determining the development of the local area, without too much intervention from Federal authorities.

AVAILABLE BY-LAWS AND ITS RELATED FEDERAL LEGISLATION

Relationship of local authorities with Federal Government and State Government

Federal level

The formulation of by-laws by local authorities are not influenced by the federal government due to the nature of the relationship between the two. Under the Federal Constitution, local authorities are directly under the control of the State Government. The involvement of Federal Government in local government affairs is through the Ministry of Housing and Local Government and the National Council on Local Government (NCLG) which consists of all the representatives from State Governments. Under the Ministry, the Local Government Division is responsible for ensuring proper development of the local government system (Yahya 1987). Its main objective is to modernise the local government system in Malaysia and provide effective and efficient services at the local level. The Division maintains its relationship through the State level Local Government Division. Regarding by-law, the Ministry's Local Government Division provides advice on local by-laws. However, the advice can be adopted or ignored by the State Local Government Division. This implies that the Federal Government has minimal influence in the administration of the local authorities and is dependent upon the willingness of the State Government to implement and adopt the advice given.

At the policy level, the Federal Government can only advise State Government to adopt uniform local government by-laws through the NCLG. Again, the decision whether the State Government adopts its advice is largely dependent on the NCLG to convince its members to adopt the decision reached.

State level

The State Local Government Division controls the local authorities in their respective States, thus playing a bigger role in the development and management of local authorities (Yahya 1987). The State LGD has the responsibility to co-ordinate, monitor and evaluate the administration of all the local authorities within its jurisdiction. Where by-laws are concerned, under Section 23 of the Eleventh Schedule in the Federal Constitution, local authorities are given the power to formulate local by-laws in order to carry out their given functions. It states:

“Where an Ordinance or Enactment confers power on any authority to make subsidiary legislation, such subsidiary legislation may at any time be amended, varied, rescinded or revoked by the same authority and in the same manner by and in which it was made”.

However, all by-laws have to be reviewed and approved by the State Government to ensure that the by-laws do not conflict with any federal legislation and government policies.

In addition, the Local Government Act 1976 is the authoritative legislation governing local authorities. Two other legislations, the Street, Drainage and Building Act 1974 (SDBA 1974) and Town and Country Planning Act 1976 (TCPA 1976) are used concurrently with the Local Government Act 1976. These legislations provide the powers to local authorities to formulate their own by-laws according to their local needs and allow flexibility. This enables local authorities to amend their by-laws as they see fit from time to time. An advantage of these available provisions is that local authorities can be proactive in their efforts to address environmental problems and adopt the prevention approach rather than curative. A curative approach is more expensive not only in monetary terms but where a major pollution incident has occurred, the effect on human health, damage to the natural physical aspect such as water and land, and the marring of the local authority's public image can prove to be more costly.

FINDINGS AND RECOMMENDATIONS

The title and contents of the by-laws for each local authority are basically the same, with some provisions being added on for some local authorities, depending on the issues unique to a particular local authority. There are differences in the penalty rates as each local authority has the discretion in deciding the rates. This provision is found in Section 104 of the Local Government Act 1976 which gives local authorities the power to prescribe a maximum fine of two thousand

ringgit for the breach of any by-law and in the case a continuing offence, a maximum of two hundred ringgit for each day can be imposed on the offender.

By looking at the provisions of the by-laws, it is seen that vital environmental components are addressed. This is shown in Table 1, where the by-laws in the matrix are selected base on the direct and indirect provisions related to the protection of the environment. Nine environmental components were selected to show the provisions available related to the management of the environment, namely air, noise, health, water quality, waste, sewage/drainage, land degradation, nuisance and public safety. Six common by-laws which are most relevant to the protection of the environment were chosen, namely Market by-laws, Refuse Collection, Removal and Disposal by-laws, Earthworks by-laws, Trade, Business and Industry Licensing by-laws, Parks by-laws and Hawkers and Stalls by-laws. Out of the six, three of these by-laws, Refuse Collection, Removal and Disposal, Earthworks and Trade, Business and Industry Licensing have provisions to address the selected environmental components.

TABLE 1

ADEQUACY OF LOCAL AUTHORITIES BY-LAWS AND ENVIRONMENTAL COMPONENTS IN ENVIRONMENTAL PROTECTION

By Laws Environmental Components	Refuse Collection, Removal and Disposal	Earthworks	Park	Market	Hawker and Stalls	Trade, Business and Industry Licensing
AIR	X	X			X	X
NOISE		X	X			X
HEALTH	X	X	X	X	X	X
WATER QUALITY	X	X	X			X
WASTE	X	X	X	X	X	X
SEWAGE/DRAINAGE	X	X		X	X	X
LAND DEGRADATION	X	X				
NUISANCE	X	X	X	X	X	X
PUBLIC SAFETY	X	X	X	X	X	X

By-laws which do not cover any of above environmental component is covered under various Federal legislation.

The following is an assessment of the common by-laws of each local authority. The main points relation to environmental management are emphasised in order to highlight the provisions available under the by-laws.

Refuse Collection, Removal and Disposal by-law

This by-law addresses both the management of domestic and industrial waste disposal. Among the types of wastes defined are:

- garden refuse (leaves, grass, branches of trees),
- household refuse (any waste matter generated from a house),
- industrial effluent (liquid water or waste water produced at any industrial premises), industrial waste (any waste matter generated from industrial activity),
- sewage (any liquid waste or waste water discharge containing animal or vegetable matter in suspension or solution, and includes liquids containing chemicals in solution) and
- waste building materials (refuse produced during the construction of any house or building or project).

This by-law is comprehensive in that it also addresses the various types of disposal methods. They include:

- Prohibition of litter or any refuse in any public place.
- Open burning of waste and refuse are totally prohibited except in such manner and place approved by the Council.
- Industrial waste or commercial waste shall be disposed of by the respective commercial establishment at a dumping ground maintained by the Council.
- No person shall discharge or cause or permit the discharge of any effluent without the permission of the Council.

These provisions may be felt to be adequate to address waste issues but in reality, industries often state that Council do not provide adequate grounds in which they can dispose of their waste properly (Asean Environmental Law Project 1994). This causes factories, particularly Small Medium Industries (SMIs) to dispose its industrial wastes into rivers and drainage systems as it is cheaper to pay the maximum fine of RM1000 than to purchase high technology environmental friendly waste disposal system (personal communication with local authority legal officers 1996).

Licensing of Trades, Businesses and Industries

This by-law is similar to the Refuse Collection, Removal and Disposal by-law as it contains provisions on the various methods of disposal in accordance with the license given by local authorities to businesses, trades and industries. Other provisions available under this by-law which are not included in the Refuse Collection, Removal and Disposal by law is that the holder of the license shall not cause, suffer or permit dust, fume, vapour, gas and heat to pollute the atmosphere. The licensee must also take precaution not to create or cause any noise so as to constitute nuisance. Although the pollution of rivers, streams and water bodies

are excluded under this by-law, Section 63 of the Local Government Act 1976 contains provisions to address this matter. However, it is recommended that a provision to address the pollution of water bodies and rivers should be included in this by-law in order to provide more comprehensive powers to the local government.

Since the local government is granting the license for industries to carry out its activities, the inclusion of a provision for the pollution of water bodies is logical. Licenses are given to businesses and industries which produces highly toxic wastes such as manufacturing of chemical materials, building and construction materials, rubber, plastic, leather, battery and electro-plating. The by-law must also contain measures which the polluter must take to prevent any possibility of polluting surrounding water bodies. This also prevents the need for the local government enforcement officers to refer to the Local Government Act 1976 or the Department of Environment (DoE) in order to prosecute the offender *unless* it is felt that the by-law is inadequate for prosecution depending on the seriousness of the pollution.

Earthworks by-law

This by-law, enacted under the Street, Drainage and Building Act 1974 is to regulate earthworks activities. Under this by-law, measures to reduce the effect on the physical landscape of the area to be developed must be taken by the developer. Among them include a preliminary site evaluation which has to be submitted with details of erosion and sediment control measures, provision of silt traps, and precautions to be taken to prevent any nuisance arising from earthworks including dust, noise and air pollution. The maximum fine for any breach of the by-law is RM2000, and maximum of RM1000 for each day during which the offence is continued after the conviction. Although the by-law addresses the need to maintain the drainage systems, it does not contain provisions to prevent pollution to nearby rivers and streams which can be affected by soil erosion and siltation. This source of pollution is commonly referred to as 'non-point sources'. It must be included as local authority by-laws and any Federal legislation related to the environment, including the Environmental Quality Act 1974 has no provision to address pollution resulting from 'non-point sources'.

Parks

Under the Local Government Act 1976, local authorities can enact by-law to protect local parks. However, the definition of parks is not just limited to local green belts or playground. Parks are defined as:

"gardens, open spaces, footpaths, recreation, or pleasure grounds, roundabouts, central dividers along roads, sides of roads, road reserves, stream, rivers, river bank or any other grounds maintained by or under the jurisdiction of the Council".

Among the provisions contained in this by-law include discharging of any waste matter or effluent from any premises into a lake or a stream (in the park). The local authority can also take action if there are any activities which are likely to pollute its parks such as the depositing or throwing of any dust, dirt, paper and ashes. This creates a problem because what constitutes as the amount of dust or ash which has the probability to pollute has not been defined. This creates uncertainty among the local authorities themselves. A problem can arise because the quantity of dust or ash which is considered by the Municipal Council of Selayang to be a nuisance may not be considered a nuisance by the Municipal Council of Ampang Jaya. Furthermore, the by-law lack specific provisions to prohibit air and noise pollution. Although this is indirectly implied in the by-law such as the provision which prohibits the throwing of dirt, sand or gravel in the park and the use of loud hailer, amplifier or public address system in parks, it is not clear whether these provisions are sufficient to prevent air or noise pollution from other sources. Where the latter is concerned, the enforcement officer can only prosecute for noise pollution when the offender uses a loud hailer, amplifier or a public address system.

Other provisions in related federal legislation

Provisions not covered by the by-laws are found in the LGA 1976, SDBA 1974 and TCPA 1976. However, it is the local authority's discretion to adopt the various provisions available under these three legislations. Depending on the seriousness of the offence, in the majority of cases, local authorities prefer to use their by-law. If the by-laws are found to be inadequate, the provisions available in LGA 1976, SDBA 1974 and TCPA 1976 will be used. Local authorities will only call on the Department of Environment (DoE) to prosecute using the Environmental Quality Act 1974 if the nature of the offence cannot be dealt with adequately in terms of the seriousness of the offence and penalties available. Priority to utilise local by-laws is important because local authorities need to generate the funds for the administration and development of their area. Funding for the local government can be divided into two categories, Land Based Source of Revenue (LBS), which is the property tax landowners pay, and Non-Land Based Source of Revenue (NLBS) (Pahang 1997). The latter can be further divided into income which are generated by the local authority and grants from the Federal Government. Fines and penalties from by-laws fall under the NLBS category. The potential of generating more income through stricter enforcement of by-law is great. This is to vary the sources of finance for local authorities and not depend solely on federal grants.

Overall, provisions in local authority by-law are enough to address various environmental issues. The flexibility of amending or adding to the by-laws enable local authorities to be address environmental problems expeditiously rather than to wait for new amendments to the LGA 1976, SDBA 1974 and TCPA 1976 be approved at the Federal level.

DRAWBACKS

Although many of the provisions available seem to address the selected environmental components stated in Table 1, there are drawbacks to these provisions which can be challenged in court by the offender.

Vagueness of terms

Many of the terms used in local authority by-law are not defined specifically so as to create a standard among local authorities in Selangor. The Earthworks by-law for MPAJ Section 21 states:

"For Earthworks covering a large area, the Council may at its absolute discretion, through the engineer of the Council, require an environment and/or a drainage impact assessment study to be submitted by the engineer".

(Municipal Council of Ampang Jaya 1992).

What constitutes a 'large area' is not defined in the by-laws. However, the size is determined by the measurements given by the Engineering Division of each local authority. The term *large area* should be defined in a quantitative term such as required under Section 34B of the Environmental Quality Act 1974 (Amended 1996). Thus, by-laws can specify that if the area to be developed is more than 40 hectares, the developer must carry out an EIA. This will create a standard which each local authority have to follow and easier for the developer to abide.

Low penalty rates

Another drawback to the by-laws is the penalties provided by local authorities are considered low particularly by the small medium industries (SMIs). The ASEAN Environmental Improvement Project, which carried out a study in 1994 on the effectiveness of local by-laws in ASEAN, found that penalties imposed by local authorities council in Malaysia on industries are negligible to deter malpractice (ASEAN Environmental Improvement Project 1994). The study found that, companies particularly SMIs were not complying with local authority by-laws because of the lack of enforcement and low penalty rates. The SMIs stated that it was cheaper to flaunt the law and pay the fine rather than purchase high technology environmental friendly equipment which can dispose of their waste properly and reduce the pollutants emitted. Furthermore, none of the by-laws assessed specified the responsibility of the offender to implement 'cleaning-up' operations as part of community service because the provision is not available under the Local Government Act.

Another reason stated is the local authorities lack proper infrastructure facilities to enable SMIs to dispose of their industrial waste. The SMIs felt that it was unfair to penalise them due to the lack of facilities available.

Absence of Standards for pollutants

Under the various by-laws, enforcement officers can prosecute a person for the discharge of effluents into streams and rivers. However, it does not specify the level of pollutant in the effluent as found in the Environmental Quality Act 1974. Although it is in breach of the local authority by-law, the decision to prosecute the offender can be challenged in court because there is no standard as to the level of pollutant which is permitted to be discharged.

Overlapping of functions

The overlapping of functions between local authorities and other government institutions contribute towards the ineffectiveness of the by-laws pertaining to environmental management. Table 2 illustrates the number of government agencies who have jurisdiction over four environmental components namely air, water, refuse and noise.

TABLE 2

GOVERNMENT AGENCIES WITH ENVIRONMENTAL POWERS IN THE ADMINISTRATION OF SELECTED ENVIRONMENTAL ASPECTS

Aspect	Government agency with legal powers
Water	Department of Environment, Drainage and Irrigation Department, Local Authorities, Department of Fisheries, Department of Health, Department of Land and Mines.
Air	Department of Environment, Department of Transport, Land Office, Local Authorities, Department of Forestry, Department of Land and Mines.
Refuse	Department of Environment, District and Land Office, Local Authorities.
Noise	Department of Environment, Department of Factory and Machinery, District and Land Office, Local Authorities.

Adapted from Jamaluddin 1997.

The duplicity of the functions exists because there is no clear division of responsibilities among the agencies. For example, in the management of water,

there are six agencies which are responsible for its management. Thus, conflict can arise over the execution of duties. Where by-laws are concerned, the overlapping function creates a greater conflict due to the nature the by-laws are formulated. When a by-law is approved by the State government, there is no consultation with the federal agency which may have the same function and jurisdiction under a federal legislation. Therefore, a conflict can arise when a problem occurs such as the pollution of a river where an agency which as jurisdiction over water must take responsibility for its management. Although local authorities also have the responsibility to manage aspects of the environment, they believe that in the majority of cases, the responsibility lies with the DoE. This is because the provisions available under the EQA 1974 are felt to be more complete than a local authority by-law.

CONCLUSION

The by-laws seem, on paper, to have adequate provisions covering the various environmental issues. Its flexibility enables local authorities to amend provisions with immediate effect. This means that local authorities can play a proactive role in the efforts of protecting the environment. However, recent reports on local authorities have stated that the rate of enforcement is particularly lacking. Calls have been made by Ministers and State EXCO members for local authorities to improve their enforcement efforts. The reasons given were the lack of enforcement efforts and insufficient number of trained enforcement officers who are knowledgeable on the laws.

(New Straits Times 8/8/1997).

In recent years, local authorities have realised the need to strike a balance between environment and development. However, no matter how much power is given to local authorities to take stern action against polluters through by-laws, the implementation of laws will not succeed or even 'take off' if there is lack of political will, inadequate financial support, and shortage of manpower to carry out enforcement work. Respective environmental roles, responsibilities and working relationships among the different local authorities, Federal agencies and the public need to be specified in order to promote the harmonisation and co-ordination of environmental management and make the enforcement of by-laws effective.

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