



Terbitan Kes Tahun 1991

LEMBAGA RAYUAN
NEGERI PULAU PINANG

Volume 1/2011



Dilancarkan oleh

.....
Y.B. TUAN WONG HON WAI
PENGERUSI JAWATANKUASA PERANCANG BANDAR DAN DESA,
PERUMAHAN DAN KESENIAN
NEGERI PULAU PINANG



JABATAN PERANCANG BANDAR DAN DESA
NEGERI PULAU PINANG



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PERUTUSAN YB TUAN Pengerusi PERANCANG BANDAR & DESA, PERUMAHAN DAN KESENIAN



Jilid Terbitan Kes Lembaga Rayuan Negeri Pulau Pinang ini merupakan satu usaha yang penting. Kes-kes yang telah diputuskan di Lembaga Rayuan sejak 1990an dijilidkan dan diterbitkan untuk pengetahuan orang ramai. Terbitan ini bukan sahaja akan menjadi bahan rujukan kepada pengamal undang-undang, ahli akademik dan juga memberi manfaat kepada profesional yang terlibat dalam perancangan. Ratio decidendi dalam keputusan ini akan menjadi panduan kepada orang ramai bagaimana sesuatu keputusan Lembaga Rayuan dicapai berasaskan undang-undang dan fakta.

Lembaga Rayuan di Pulau Pinang adalah antara Lembaga Rayuan yang aktif di Malaysia. Ini sejajar dengan kedudukan Pulau Pinang sebagai satu negeri yang pesat dalam pembangunan. Negeri Pulau Pinang juga mempunyai kumpulan aktivis serta individu yang aktif dalam memberi pandangan kepada authority dari segi isu-isu pembangunan dan perancangan. Ini merupakan petanda yang positif memandangkan kayu pengukur kejayaan sesebuah negeri bukan hanya bergantung kepada kepesatan pembangunan tetapi juga tahap penyertaan orang ramai dalam hal-ehwal awam.

Dewan Undangan Negeri Pulau Pinang pada persidangan November 2011 telah meluluskan Rang Undang-Undang Kebebasan Maklumat Negeri Pulau Pinang. Ini merupakan satu perundangan yang penting memandangkan halatuju pentadbiran Negeri Pulau Pinang ialah supaya ketelusan dari segi pentadbiran Kerajaan Negeri dapat dipertingkatkan. Ini sejajar dengan Prinsip Competency, Accountability dan Transparency yang dipelopori oleh Kerajaan Negeri.

Maka, usaha Terbitan Kes Lembaga Rayuan Negeri Pulau Pinang mulai dari volume 1 dan 2 untuk keputusan tahun 1991 dan 1992 ini sejajar dengan halatuju ketelusan maklumat yang dipelopori.

Ini juga merupakan satu usaha berterusan untuk memartabatkan Lembaga Rayuan di Pulau Pinang sebagai satu entiti yang berwibawa dan berkecuali. Saya bagi pihak Kerajaan Negeri mengalu-alukan Terbitan Kes Lembaga Rayuan Negeri Pulau Pinang dan juga jilid-jilid yang berikutnya.

YB Wong Hon Wai
Ahli Majlis Mesyuarat Kerajaan Negeri Pulau Pinang
(Perancang Bandar & Desa, Perumahan dan Kesenian)

PERUTUSAN PENGARAH

Assalamualaikum w.b.t dan salam sejahtera.

Lembaga Rayuan Negeri Pulau Pinang ditubuhkan pada tahun 1985, di bawah peruntukan Seksyen 36, Akta Perancangan Bandar dan Desa 1972 (Akta 172), apabila Kaedah Lembaga Rayuan Negeri Pulau Pinang mula diwartakan pada tahun 1989.

Lembaga Rayuan ini merupakan satu badan bebas atau berkecuali yang dilantik oleh Pihak Berkuasa Negeri Pulau Pinang bertujuan untuk memberi peluang kepada mana-mana pihak sama ada pemaju-pemaju, pemilik-pemilik hartanah, pemilik lot-lot berjiran, agensi swasta mahupun orang awam untuk mengemukakan rayuan sekiranya terkilang atau tidak berpuas hati dengan keputusan Pihak Berkuasa Perancang Tempatan ke atas penolakan permohonan kebenaran merancang, syarat-syarat pemberian kebenaran merancang atau lain-lain bantahan yang diperuntukkan di bawah Akta 172.

Penubuhan Lembaga Rayuan dan kecermelangannya di Negeri Pulau Pinang sejak 20 tahun lalu mampu memberi satu indikator yang positif di pihak awam bahawa sistem perancangan bandar dan desa di negeri ini telah berjaya mencapai suatu tahap kematangan.

Sejak Lembaga Rayuan Negeri Pulau Pinang ditubuhkan, naskah ini merupakan usaha sulung pihak JPBD Pulau Pinang untuk menerbitkan satu kompilasi buletin yang mengandungi keputusan-keputusan yang telah dibuat oleh Pengerusi Lembaga Rayuan Negeri Pulau Pinang.

Kompilasi ini diharap dapat dijadikan sebagai bahan rujukan dan panduan kepada pengamal-pengamal perancangan bandar dan desa, pihak akademik, pihak berkuasa tempatan, pelajar-pelajar perundangan dan sesiapa juga yang berminat dengan perundangan berkaitan perancangan bandar dan desa.

Warga pembaca sekalian, pihak JPBD Negeri Pulau Pinang akan meneruskan usaha-usaha untuk menerbitkan kompilasi-kompilasi keputusan Lembaga Rayuan dari tahun ke tahun agar manfaat keputusan-keputusan ini dapat dijadikan panduan dalam memperkukuhkan corak perancangan bandar dan desa di Negeri Pulau Pinang khasnya dan di seluruh negara amnya.

Sekian. Terima kasih.

Tuan Hj. Zainuddin bin Ahamad
Pengarah
Jabatan Perancang Bandar dan Desa
Negeri Pulau Pinang

PRAKATA

Terbitan Kes Lembaga Rayuan Negeri Pulau Pinang Volume : 1 merupakan himpunan Kes-Kes Lembaga Rayuan Negeri Pulau Pinang yang telah difailkan pada tahun 1991 iaitu tahun pertama kes-kes Lembaga Rayuan mula difailkan sejak penubuhannya pada tahun 1989. Pada tahun tersebut Lembaga Rayuan telah menerima 7 kes rayuan di bawah peruntukkan Perenggan 23(1)(a) Akta 172 iaitu rayuan terhadap Kebenaran Merancang sekiranya seseorang terkilan dengan; Keengganan PBPT untuk memberi Kebenaran Merancang (KM) atau syarat-syarat yang dikenakan dalam sesuatu KM.

Walaupun 7 kes rayuan difailkan, namun hanya 3 kes dibicarakan pada tahun 1992 kerana 4 kes daripadanya telah ditarik balik oleh perayu dan kes pertama yang dibicarakan adalah pada 22 Jun 1992 iaitu kes bernombor pendaftaran *LR/SP/3/91* yang melibatkan Majlis Perbandaran Seberang Perai (MPSP) sebagai pihak responden. Begitu juga dengan lain-lain kes yang difailkan pada tahun 1991 tersebut semuanya melibatkan MPSP sebagai responden. Berdasarkan analisa yang dibuat, daripada 3 kes yang dibicarakan, 1 kes telah berpihak kepada perayu ataupun dalam istilah lain rayuan yang difailkan oleh perayu terkilan telah dibenarkan oleh Lembaga Rayuan dan menyebabkan pihak PBPT telah kalah dalam kes tersebut. Kes yang dimaksudkan adalah kes bernombor pendaftaran *LR/SP/4/91* oleh *Tetuan Goh Hock Seng*.

Sebagai satu badan berkecuali (*independent body*), Lembaga Rayuan yang diwujudkan oleh Pihak Berkuasa Negeri bertindak sebagai satu tribunal bertanggungjawab mendengar, mempertimbang dan membuat keputusan kepada kes-kes sebagaimana dinyatakan di bawah Akta 172 juga perlu diwakili oleh ahli-ahli yang juga bersifat berkecuali. Pada tahun 1991 tersebut Ahli Lembaga Rayuan yang terlibat dalam mendengar, mempertimbang dan membuat keputusan terhadap kes-kes yang difailkan adalah terdiri daripada Pengerusi iaitu *Y.Bhg. Tan Sri Dato' Chang Min Tat* dan ahli-ahli seperti *Y.Bhg. Dato' Khalid Ahmad Bin Sulaiman*, *Y.Bhg. Dato' David Choong Ewe Leong*, *Dr. Ong Hean Tee*, *Puan Hajjah Saleena Bt Yahaya Isa* dan *En. Lee Kok Kiang*.

Justeru, setelah 20 tahun berlalu terbitan kes-kes Lembaga Rayuan Negeri Pulau Pinang bermula pada tahun 1991 merupakan refleksi komitmen kami bagi mendokumentasi himpunan kes-kes yang telah difailkan agar menjadi sebahagian rekod peribadi jabatan di samping menjadi bahan rujukan dan panduan kepada profesional dalam bidang perancang bandar dan desa serta pihak-pihak yang berminat untuk mendalami serta menjiwai sendiri ruang lingkup tribunal ini. Manfaat jua yang tersimpul menjadi harapan kami tatkala limpahan ilmu daripada *Terbitan Kes Lembaga Rayuan Negeri Pulau Pinang Volume : 1* selesai didalam pembaca. Selamat membaca.

Dari Meja Penerbit,
Bahagian Korporat dan Lembaga Rayuan
Jabatan Perancang Bandar dan Desa
Negeri Pulau Pinang

DALAM LEMBAGA RAYUAN NEGERI PULAU PINANG, MALAYSIA
RAYUAN NO: LR/SP/3/91

PERMOHONAN KEBENARAN MERANCANG UNTUK
CADANGAN TAPAK PERKUBURAN CINA
DI ATAS LOT 695, MK. 4, SPS.

Di antara
PERSATUAN PERKUBURAN CINA SEBERANG PERAI SELATAN
Dan
MAJLIS PERBANDARAN SEBERANG PERAI

RAYUAN NO: LR/SP/3/91

FAKTA KES

Pengerusi Lembaga Rayuan	:	Y.Bhg. Tan Sri Dato' Chang Min Tat
Ahli-ahli Panel	:	Y.Bhg. Dato' Khalid Ahmad Bin Sulaiman Y.Bhg. Dato' David Choong Ewe Leong
Perayu	:	Cik Sharmi Ramiah En. Tan Choon Huat
Responden	:	Majlis Perbandaran Seberang Perai En. Mohd. Azam Bin Mohd. Abid
Keputusan Rayuan	:	Rayuan Ditolak
Tarikh Keputusan	:	22 JUN 1992

BRIEF FACTS

This Appeal is made by Persatuan Perkuburan title Cina Seberang Perai (appellant) who is the registered proprietor of the land held vide issue document of title No. Lot 695, Mukim 4, Seberang Perai Selatan (said land). The Appellant made an application to the Town Planning Department of Majlis Perbandaran Seberang Perai (Respondent) as the Local Planning Authority for planning permission to develop a burial ground on the said land.

The Respondent, after considering the application for planning permission made by the Appellant and the legal requirements made the decision to reject the application for planning permission made by the Appellant on the following grounds:

1. The Committee has received objections from neighbouring landowners of Lot Nos. 694-696 in its meeting on 23rd November 1990.



2. The proposed development does not have a legal and perfect right of way.

The decision of the Respondent to reject the proposed planning permission was notified to the Appellant vide First Schedule Form dated 23rd April 1991, pursuant to Rule 10(2) Planning Control (General) Rules 1990 in compliance with the small requirement of the provision of section 22(3) Town And Country Planning Act 1976 (Act 172).

The Appellant aggrieved by the decision of the Respondent to reject his application, made an appeal to Appeal Board vide the notice of Appeal Against the Decision of the Local Planning Authority dated 16th August, 1991 pursuant to Rule 4(2)(a) Rules of Appeal Board 1989 in compliance with the requirements of provision of section 23(1)(a) Town And Country Planning Act 1976 (Act 172).

DECISION OF APPEAL BOARD

The Appeal Board, after hearing the submission by all parties decided to reject the appeal made by the Appellant.



DALAM LEMBAGA RAYUAN NEGERI PULAU PINANG,
MALAYSIA

RAYUAN NO: LR/SP/4/91

PERMOHONAN KEBENARAN MERANCANG BAGI
CADANGAN PEMBINAAN BANGUNAN KILANG DI ATAS LOT
492, MK. 7, SPS.

Di antara
TETUAN GOH HOCK SENG
Dan
MAJLIS PERBANDARAN SEBERANG PERAI

RAYUAN NO: LR/SP/4/91

FAKTA KES

Pengerusi Lembaga Rayuan : Y.Bhg. Tan Sri Dato' Chang Min Tat
Ahli-ahli Panel : Dr. Ong Hean Tee
Puan Hajjah Saleena bt. Yahaya Isa
Perayu : En. Goh Hock Seng
Responden : Majlis Perbandaran Seberang Perai
Keputusan Rayuan : **Rayuan Dibenarkan**
Tarikh Keputusan : 15 September 1992

DECISION

This is an appeal by En. Goh Hock Seng, one of the registered owners of a piece of land held under a Mukim Grant and the operator of a plastic-moulding factory which had been built on the said piece of land from the decision of the Town Planning & Building advisory committee of Seberang Perai, confirmed by the Full Council of the Majlis perbandaran Seberang perai, to disapprove their plans for the proposed plastic factory.

The Mukim Grant does not prescribe any of land use. According to the Draft Structure Plan for MPSP, the lot is within the development area, i.e. it is planned for housing. The reason given for the rejection of the use of the land for a factory is predictably that the plan (1A) dlm MPSP/70/9-67/27 was not in line with the proposed Draft Structure Plan.

In his appeal, the appellant first relied on economic issues. From 1983 he had approval for the use of the site as a workshop. For this purpose, he was given a Temporary Building Permit. In 1990 he met with some Taiwanese parties who gave him support, expertise and possibly financial assistance for a factory molding plastic telephones, all oriented for export.



He therefore submitted plans for this factory but without waiting for approval built this factory. It is not an uncommon practice.

He is not without reasons. We understand that the normal time for the final determination of any application for a building permit is some three years. The appellant could not wait that long. If he had waited, the support etc of his foreign partners would be withdrawn.

In this factory, the Appellant employs some 200 workers, a large proportion of whom are bumiputras from a nearby kampong where he himself came from. Amongst the workers are a few disabled persons. He could also provide training places for 6 to 7 from a nearby vocational school. If the plans were disapproved, he would be forced to close down the factory. He could not afford to relocate his factory in the adjacent industrial area. The cost of the land at \$ 7/- per square foot was prohibitive. All these workers would lose their jobs and the training facilities would be lost. His idea of bringing industry to rural areas, near the homes of his fellow-villagers, would be frustrated.

The factory causes no pollution to the air, is noise-free and its effluent is not harmful.

In his reply, En. Mohd. Azam bin Abid, for MPSP, stressed the non-compliance with the Draft Structure Plan.

The appellant also referred to several approved industrial uses of land nearby, for motor repairs, a rubber factory and a coffee workshop.

We adjourned the hearing of the appeal for further elucidation on this industrial development. At this adjourned hearing, En. Mohd. Pilus bin Mat Noor, Pengarah Bangunan, Seberang Perai and Puan Rosnada binte Abu Hassan, Legal adviser to MPSP addressed us.

At This further hearing, it was established that all such developments, including the Appellant's original workshop, were approved under Temporary Building permits before the adoption of the Draft Structure Plan. These have been allowed to carry on, the Appellant's as well, if he had continued to operate the approved building as a workshop.

Action was taken against the appellant only because he had carried out alterations and enlarged his workshop, thereby changing it into and using it as a factory, all without permission.



Puan Rosnada binte Abu Hassan advised us that the effect of this unauthorized construction was that the original Temporary Building Permit had ceased to be affective. And because of this the Appellant was liable to an action for illegal construction. Indeed a summons has been issued against the Appellant in the Magistrate's Court at Seberang Perai. It is due to be heard very shortly.

Dr. Ong who has considerable experience in such matters advisers us that the MPSP can and quite often does give approval for plans even after building has commenced. To meet the justice of the case, there are provisions for imposing fines for late applications.

Insofar as the planned use of land for housing is concerned, there is no demonstrable demand, now or in the near or foreseeable future for housing in this area. It was said without contradiction that a completed nearby housing scheme- Taman Sinta is almost entirely unsold and unoccupied. Dr. Ong Hean Tee and Puan Hajjah Saleena were of the firm view that the appeal should be allowed.

I would respectfully agree.

I fully appreciate that under normal circumstances the Draft Structure Plan should be followed. It makes for a more consistent development of the area concerned. But where circumstances exist which could be considered and given effect to without ill effect to the over-all purpose of the Draft Structure Plan, I ought not to hesitate or to refuse to consider such circumstances.

In the shown circumstance of the absence of any serious demand for housing in the immediate area and having regard to the continued use of the adjacent lots for workshops, continuation of the use of this factory would in this particular case ensure the continued employment of the 200 persons now employed at this factory. But what in my view is more to the point is that approval of the Appellant's application for the alternations would not affect the implementation of or delay the Draft structure Plan if the approval is made on a temporary basis so that when the time comes, if it should come, for implementing the Plan for this area for housing , MPSP's powers to act or the application of the Draft Structure Plan would not, in any way, be prejudiced.

The appeal is therefore allowed. The approval of the Applicant's plans would be on a temporary basis and subject to such reasonable conditions on health, safety and environmental or other such ground as may be imposed.

Dated this 15 th day of September 1992



DALAM LEMBAGA RAYUAN NEGERI PULAU PINANG,
MALAYSIA

RAYUAN NO: LR/SP/5/91

PERMOHONAN KEBENARAN MERANCANG BAGI CADANGAN
STESYEN SERVIS DAN PETROL DI ATAS LOT-LOT 1929 – 1922,
1859 DAN 1860, BANDAR PRAI, SPT.

Di antara
TETUAN I & P INDERAWASIH JAYA SDN. BHD
Dan
MAJLIS PERBANDARAN SEBERANG PERAI

RAYUAN NO: LR/SP/5/91

FAKTA KES

Pengerusi Lembaga Rayuan : Y.Bhg. Tan Sri Dato' Chang Min Tat
Ahli-ahli Panel : Y.Bhg. Dato' David Choong Ewe Leong
En. Lee Kok Liang
Perayu : En. Ismail b. Zakariah
Responden : En. Mohd. Azam Bin Mohd. Abid
Keputusan Rayuan : **Rayuan Ditolak**
Tarikh Keputusan : 22 Jun 1992

BRIEF FACTS OF CASE

This appeal has been made by Tetuan I & P Indrawasih Jaya Sdn. Bhd. (Appellant) who is the registered proprietor of the lands held vide issue document of titles Lot-lot 1929-1922 and 1859 and 1860, Bandar Prai, Seberang Perai (the said land). The Appellant has made an application to the Town Planning Department of the, Majlis Perbandaran Seberang Perai (Respondent) who is also the Local Planning Authority for permission to build a petrol and service station on the said land.

The Respondent, after considering the application by the Appellant and by taking into consideration the legal requirements has decided to reject the application for planning permission on the ground that, that there are objections made by the people living around the land.

The decision to reject the application for planning permission was notified to the Appellant vide the First Schedule Form dated, 30th October 1991 pursuant to Rule 10(2) Development Control (General) Rules 1990 subject to provision of section 22(3) Town and Country Planning Act 1976.



The Appellant, aggrieved by the decision of Respondent submitted a Notice to Appeal Against the Decision of the Local Planning Authority to the Appeal Board dated pursuant to Rule 4(2)(a) Rules of Appeal Board 1989 in compliance with the provision of section 23(1)(a) Town and Country Planning Act 1976 (Act 172)

GROUND OF APPEAL SUBMITTED BY THE APPELLANT IN SUPPORT OF HIS APPEAL AS FOLLOWS:

The proposed development would further help in provision of facilities in Taman Inderawasih, Perai. Other facilities like shop houses, schools, surau, light industry, gerai, and commercial complex has been planned and some which are already implemented in order for Taman Inderawasih to be provided with all facilities.

Petronas Dagangan Sdn. Bhd has chosen the site due to its suitability because it is along Jalan Chain Ferry and its close proximity to the Petronas Depot in Perai. The proposed development is not only to act as a petrol and service station but also to be used by PETRONAS as a training centre for petrol station dealers for the northern region (Perlis, Kedah, Penang and Northern Perak).

As a Bumiputra company, PETRONAS still does not have enough representation as expected for petrol and service station around Butterworth and Seberang Perai. The site for the proposed development has been identified as the site with the most potential.

There is no basis for the residents which have voiced their objections on the ground that the proposed development is an offensive to the surrounding. It is because before the project is going to be implemented, it needs to follow the conditions set by government agencies eg. JKR, MPSP, Department of Environment, Fire Department and others in term of access road, affluent discharges and so on.

In Penang state there are already petrol stations which have been built within housing areas or neighbouring areas.

DECISION OF THE APPEAL BOARD

The Appeal Board, after hearing the submission from all parties decided to reject the Appeal made by the Appellant.



Sidang Pengarang

Penasihat

Tuan Haji Zainuddin bin Ahamad

Penyelia

Pn. Raimah binti Kassim

Ahli Jawatankuasa

Cik Fakhriyah binti Hanafi

Pn. Rakiah binti Laidin

En. Mohd Ghazali bin Mat Rasit

En. Zulkifli bin Omar

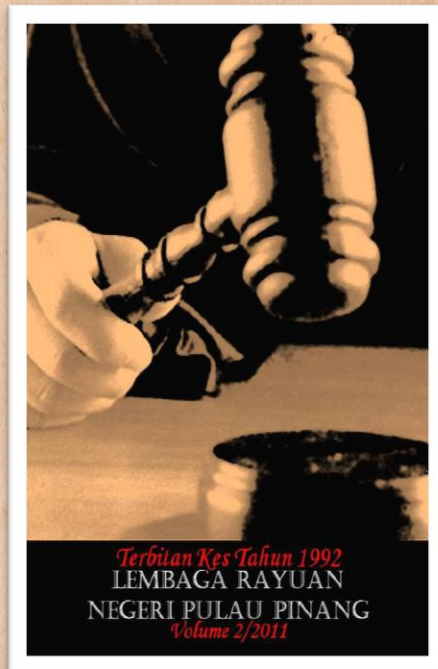
En. Ismit bin Yusof

En. Mohd Fadzli bin Ahmad

En. Norrazi bin Ismail

Cik Haslina binti Hashim

Keluaran seterusnya



Sebarang pertanyaan sila hubungi:

*Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang
Tingkat 57, KOMTAR, 10000 PULAU PINANG.*

04-6505270

sambungan kepada

Cik Fakhriyah bt. Hanafi

En. Zulkifli b. Omar

En. Ismit b. Yusof

En. Norrazi b. Ismail

Cik Haslina bt. Hashim

atau layari

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