

Licensing Management Challenges: The Case of Migrants' Application of Food Establishment and Industrials/Trade Business in Alor Setar City Council

Jazilah Jalaludin

Alor Setar City Council, Kedah Darul Aman

Corresponding Author: jazilahjalaludin21@gmail.com

ABSTRACT

This study aims to examine the challenges in dealing with licensing issues involving the business of food and business establishments/trade conducted by foreigners in the case of Alor Setar City Council. The influx of foreigners who run non-licensed food stalls and restaurants business is increasingly widespread — however, no appropriate action imposed on them. The study employed qualitative design with an interview session with two license department officers from Alor Setar City Council. The findings demonstrate that Alor Setar City Council facing difficulties to implement the laws towards illegal business conducted by foreigners as most of them closed their premises during the raid and inspection. Some foreigners do business by selling food and other businesses such as grocery stores by hiring shop lots or land from local people. They are also found to have rented shops and land to be used as a business site space such as a restaurant or business of goods from their home country. Based on the existing provisions of the bylaw, there is no provision stating that business by a foreigner is not allowed. The use of the existing legislation of the bylaws has to be reviewed from the aspect of licensing for enforcement on unlicensed foreigners' premises.

Keywords: *Alor Setar City Council, Licensing, Food Premises, Legislation*

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INTRODUCTION

Globalization Local government plays critical roles in promoting well-being society by providing basic public facilities. The basic services provided

by the local governments is to issue licenses to businesses in their area of administration. This license requires to uphold the security and health of the local community as well as to generate income to the local government. It is challenging for local governments to tackle the problem of misuse of business premises particularly eateries in which the shop owner rent them out to foreigners. The current scenario is that most premises checked by local governments had a valid business license and no action could be taken against foreigners doing business at private premises. The high price offered by foreigners caused local people to rent out businesses including their registration certificates and their premises to them. Licensee will receive more profits each month compared than just a few if they run their business on their own.

In line with the issue, the state government thinks that local governments should carry out joint responsibility with the Immigration Department to take action by regulating business activities by foreigners to avoid monopoly by them in business. Local governments in Kedah through the direction of the Local Government Division dated 25 September 2014, with the existing policy, insisting that no hawker license will be passed on to foreigners. (Kedah Local Government Department, 2014). This is because the influx of foreigners in local governments' area throughout Kedah is a concern for the locals. The huge number of uncontrolled business without a license will have a negative effect not only on sustainable economic development and social security but also on national security. The huge amount of uncontrolled businesses has become concerns, disputes and questions as to why they are allowed to do business.

This study will discuss challenges facing by Alor Setar City Council in dealing with licensing of foreign premises and control mechanism recommendation for local governments.

PROBLEM STATEMENT

In the State of Kedah in particular, many foreigners carry out the business of selling food and beverages in premises or on permanent sites. The premises or sites mentioned, are intended to be a business site space such as restaurants and eateries. Based on statistics from the Kedah Immigration Department, the number of illegal immigrant's arrests made in 2016 is 49,496 and in 2018 as of March is 16,214 with a total of 114,174 arrests. (Kedah Immigration Department, 2018). The problem of an increasing number of foreigners doing business and conducting non-licensed restaurant

and food business is increasingly widespread where there is no enforcement action nor any legitimate legal action taken on these foreign businessmen. Based on the Secretary General's Circular of the Ministry of Housing and Local Government No. 3 the Year 2008, it does not allow permits for small businesses (hawkers) who run into small business activities such as farmer's market, night market or other small businesses. (Circular of the Ministry of Housing and Local Government No. 3 Year, 2008).

Other than that, based on the circular, there is no legal clause in the Food or Industrial Establishment bylaws that authorises foreigners to have premises in the local government's area and to run business. The number of foreigners doing business has mushroomed in recent years. Alor Setar City Council's Policy Maker Division which is the Legal Division has presented a paper by referring and seeking views from Kedah Legal Advisory Office regarding the matter of licensing Food Establishment to foreigners doing business in Alor Setar City Council's area. The paper has been tabled in the Licensing Committee No. 7/2017, and as a result, the committee has rejected this paper for approval. This is because it needs to be discussed further with the Kedah Local Government Division for policy formulation purposes. Following the rejection of the paper, a study was conducted to see its implications for Alor Setar City Council in the matter of licensing of food establishments to foreigners in its area.

Issues that arise are restaurants or business premises/trade owned by foreigners continue to operate without licenses for years due to licenses that cannot be given to foreigners or permanent residents. To what extent, this issue be resolved, is still unclear as to the provision under the Food Establishments Act (Kota Setar Municipal Council) 1989, and Alor Setar City Council Business and Industrial Trade Premises Act of 2010 state that business permits are granted to Malaysian citizens only.

METHODOLOGY

This study uses qualitative methods and primary data conducted through interviews with two Alor Setar City Council's officers including Head of Licensing Division and Legal Officer to give an opinion on the assessment and comparison of licensing and regulatory procedures relating to the issue of license to foreigners. Statistical data used has also been received from Kedah Darul Aman Immigration Department, Alor Setar City Council's Enforcement Division and licensing policy information from local governments of the states in Peninsular Malaysia via electronic mail.

Besides, secondary data also collected through licensing files and online data such as departmental websites and libraries through thesis, journal articles and newspapers to obtain current issues.

ANALYSIS ON APPLICATION PROCESS FOOD ESTABLISHMENT AND BUSINESS/TRADE IN ALOR SETAR CITY COUNCIL

CASE STUDY 1

Sala Classic Tom Yam and Seafood Restaurant located at Lot 5468, Plot 5-6, Jalan Alor Mengkudu 05400 Alor Setar is owned by local people who have permanent status and have been operating for more than two years. The MBAS Enforcement Division has made action notice and compound, but the owner still fails to apply for a license. On August 11, 2015, a license application from Sala Classic Tom Yam Restaurant license holder had been received on behalf of En. Fauzi bin Ramli, identity card number 681228-02-5471 and the application of the license was approved on 5 September 2015. The license holder has 17 employees from Pattani, Thailand. The question here is that after compound and notice action had been taken for several times in two years, obviously, the license holder still failed to apply and continued to operate without a license. Is a non-citizen factor had caused a problem to the license application?

CASE STUDY 2

Another case is about an Application for retail shop license by Navee Yusof bin Mohamad, identity card number 781107-76-5017. He is a permanent resident and opens a mini market (retail) shop located at KM 13, Jalan Datuk Kumbar, 06500 Alor Setar, Kedah. He is from Pakistan. On March 5, 2017, a license application was made by the owner, and it was rejected on the grounds of non-Malaysian citizens.

EXISTING LAW USED FOR LICENSING OF FOOD AND BUSINESS / TRADE ESTABLISHMENT IN ALOR SETAR CITY COUNCIL

- I. Under Local Government Act of Food Establishment Licensing bylaws (Kota Setar Municipal Council) 1989, bylaw 2, interpreted

- ‘Food Establishment’ as ‘any place where food was prepared, packaged, prepared for sale, manufactured, or displayed for sale for human consumption.’ Based on the interpretation, restaurants, coffee shop and factories are included in food establishments. Since food shop, restaurant and factory business activities are included in the interpretation of food establishments; therefore, they are under the jurisdiction of Alor Setar City Council.
- II. The Food Establishment bylaws 3, has generally established that any premises within the area under the administration of the City Council to be used as a food establishment must have a license issued under these bylaws by the Council. This indicates that business licenses issued by Alor Setar City Council are required for the establishment of food business premises. Bylaws 3 (1), provides for the following: ‘None of the places within the Council area may be used as food establishment unless it has been licensed under these bylaws by the Council for that purpose’.
 - III. Bylaws 3 (2), provides that the Council may fix the rates for license fees issued under these bylaws for a food establishment as specified in Schedule 1 of the bylaws. The provisions of by-law 3 (2) are as follows; “The fees payable for a license under the bylaws shall be as set out in Schedule 1. The Council may vary the rate of payment of this fee from time to time, but the change shall not exceed the rate outlined in the Schedule”. “Item 8-9 Table 1 of bylaws, provides the license fee for food establishment as follows: meals - not exceeding RM200.00 per year, food stalls within licensed premises - not more than RM 50.00 per year”.
 - IV. Bylaws 4 (1), Licensing of trade and industrial premises (Alor Setar City Council) 2010 provides that “an application for a license under bylaws three shall be made to the Council in such form and manner as the Council may determine”.

DISCUSSION AND IMPLICATION

There are no provisions of the Food and Business Establishments Act of Trades from Alor Setar City Council prohibits foreigners from doing business. They can do business because they do not have any restrictions or prohibitions on the law. Although by laws does not allocate any restrictions to issue food and business establishments/trades licenses to foreigners, Alor Setar City Council does not grant licenses to foreigners based on the Secretary General’s Circular of the Ministry of Housing and Local Government No.

3 of 2008 and instructions from the State Government regarding the implementation of Committee's decisions of Foreign Worker Cabinet and Foreign Immigrants (JKKPA Illegal Immigrants), the 12th anniversary of 25th September 2014 (2) (2) (ii) that imposing legal action on employers issuing licenses to foreigners including in cases related to Thai tom yam workers for chef's post.

The biggest challenge faced by Alor Setar City Council's enforcement agencies among others is to enforce bylaws towards those who have violated the law. Political intervention is one of the biggest challenges in the effort to enforce the law. Apart from that, the lack of cooperation in term of enforcement between the Local Authority and the Immigration Department had caused foreigners to become bold to work in eateries. For example, there are cases where some local people are protecting illegal immigrants when it is clear that it is an offence under section 56 (1) (d) of the 1959/63 amendment to the 2002 amendments. However, those foreigners without valid document often manage to be freed when it involves interference from politicians and authorities had no choice but to agree on the intervention.

It is found that Thai business has become attractive to all residents of Alor Setar especially food like tom yam cuisine. Many Malay restaurateurs employ foreign workers for business purposes. In their restaurant, it is found that their cooking ingredients are imported from neighbouring countries and this indirectly attracts people to come to the restaurants. The crisis and dilemma of the local community here are that many people choose to visit a shop or restaurant operated by foreigners and not locals as their cooking is much better and open till midnight even though most of the foreigners do not have a license and do not apply for a license because they are not Malaysian.

This has become a problem for local stalls and restaurant operators and made complaints as there are not many customers coming or eating at their stalls or restaurants. The impact of this scenario to the local community is that the business environment is increasingly getting competitive and increasingly threatened Malay economy. Inspection from Alor Setar City Council needs to be done from time to time to ensure that local traders or restaurateurs do not lease their premises to foreigners as it has become a major issue in Alor Setar and other local governments as well. A good monitoring and inspection system from Alor Setar City Council, cooperation and collaboration from traders in prioritising local workforce is also important to ensure both local and country's economy is not affected by the influx of foreigners and culture

brought by them. If a business license is to be granted to a foreigner, Alor Setar City Council needs to place more stringent requirements so that the rights of local traders and business are not denied.

RECOMMENDATION

Kedah Legal Advisory Office is of the view that there is no restriction on the proposal to allow food and business establishments/trade licenses issued to foreigners conducting food business around Alor Setar City. However, Kedah Legal Advisory Office recommends that some amendments be made to bylaws or provisions to nullify existing provisions and for more efficient implementation and in line with the policy recommendations being made possible by Alor Setar City Council. The standardisation by Local Government Division and the State Government of Kedah should be made clear to facilitate all local governments to carry out a uniform policy throughout the State of Kedah in cases where it is appropriate or not for certain business premises to be licensed. If it is appropriate, the first thing to consider is to require capital of proper premises of a company to be licensed, to set the type of location for the premises, to consider the type of building and type of business activity allowed. Besides, it is also important to consider terms of reference and approval of the application and to place deposit money by type of sale.

All these policies are introduced to control the entry of foreigners into the agricultural and livestock sectors. Besides, foreign workers are also not allowed to work as front lines in the service sector. This step is to provide local people with opportunities to work in fast food restaurants, convenience stores and hotels while maintaining the image of the country. Besides, the government through the Ministry of Home Affairs stipulates that the approval of foreign workers' recruitment is based on the number of employer/company requirements by creating a quota for each company requiring foreigners. The government also introduced programs for illegal immigrants such as the 3 + 1 pardon program, rehiring for over-staying foreigners who are having valid documents and having employers, e-cards for those without valid travel documents and working illegally in Malaysia and provide them temporary work permit card.

Apart from that, improvements in term of operations have to be further strengthened between Alor Setar City Council and Kedah State Immigration Department in the effort to combat illegal immigrants. The implementation

of the e-card program which expired at the end of June 2017, was the main strategy of the government in addressing the influx of illegal immigrants in Kedah. Foreigners, who do not have valid travel documents, are no longer allowed to work within the country for failing to comply with the designated deadline.

CONCLUSION

The problem of national dependence on foreign labours is very high today in the services, construction, plantation, and manufacturing sectors. This bilateral symbiosis is very beneficial to both sides. However, in terms of licensing, the government needs to take into consideration the interests of local citizens so that local people can control business activities and foreigners do not monopolise the business sector in our country. The standardisation of foreigners licensing issues for businesses under Food and Business / Trade Establishments Act is very much expected to be implemented as soon as possible. Thus, all local governments in the Kedah through Local Government Division have to take the approach to discuss this issue clearly and thoroughly based on factors of economic development of local people and influx of foreigners, especially in the area of administration of the local governments.

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