

Toward a Legal Framework for Retirement Villages in Malaysia: A Doctrinal and Comparative Analysis

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Abstract

As Malaysia is predicted to be an old country by the year 2030, developing a retirement village shall be an avenue for senior citizens to have a welfare and conducive placement for them to spend their time with value-added amenities that cater their special needs. Nevertheless, the hurdle that Malaysia faces is the non-existence of any legal framework to govern the establishment of retirement village in Malaysia (AbdHamid et al., 2021). As a result, this has cause problems not just to the authorities but also the operators or developers who might be interested to embark with this kind of project. Therefore, this research aims to analyse the concept, and elements of retirement village in Malaysian legal landscape shall be analysed through a qualitative legal study, utilising doctrinal research and content analysis. Analysis is drawn from data gathered from international and local literature. Practices and legal framework of other jurisdictions are analysed to learn lessons from the countries which already have well-established legal framework on retirement village. Having a proper legal guideline on this shall improve the well-being and quality of life of Malaysian senior citizens in line with Sustainable Development Goals particularly on Goal 3 (Good Health and Wellbeing), Goal 9 (Industry, Innovation and Infrastructure), Goal 11 (Sustainable Cities and Communities) and others on Societal Harmony and Happiness. This legal framework shall be helpful to the authority, government agencies, community and operators of retirement village in Malaysia.

Keywords: Elderly, Legal Framework, Retirement Village

Introduction

It is predicted that the number of older people aged 60 and above will reach 5.8 million in 2030 which is 15 per cent of the total population of Malaysia. Thus, this proves that Malaysia is heading towards becoming an ageing nation by the year 2030 (Harun, Ali, Layali, & Ali, 2020). This pattern is a worldwide phenomenon and is categorised as a global demographic megatrend. In view of the above, the country's future planning must necessarily include the welfare and conducive placement of its senior citizens. The increase in the number of the

elderly has led to a new cultural context in Malaysia, where the old look for residential abodes that provide a self-sufficient environment for them to spend their retirement years, with value-added amenities that cater for their needs. This is an evident shift from 30 years ago, where grandparents preferred living in their own homes while spending time with their grandchildren (Abdul Majid, Hamidi, & Denan, 2018). Other contributing factors to this transition, apart from the growing percentage of the older population, are their education level and aspirations, which include heightened awareness on the importance of health and safety, technology, and quality life.

Consequently, a retirement village is an emerging concept that suits the present and future older generation, allowing them to experience quality well-being through active ageing. In addition, as one of the target groups under Shared Prosperity Vision 2030, senior citizens will have the opportunity to age gracefully by having a proper residence which supports their emotional, physical and health conditions. Besides that, developing retirement village supports the government's initiative in one of the 10 socio-economic drivers under 10-10 MySTIE Framework which are smart cities and transportation. Having a properly planned platform for elderly to have active ageing is important in developing the growth of the country. Through having retirement village, the elderly shall have the opportunity to have residential areas which integrate the physical and natural infrastructure that facilitate them with elderly friendly amenities to deliver sustainable, resilient, and prosperous living conditions.

Nevertheless, in flourishing this concept in Malaysia, there are regulatory deterrents particularly on the non-existence of a particular legal framework governing this concept. As far as statutes regulating standards of care of the elderly are concerned, Care Centres Act 1993, which is administered by the Ministry of Women, Family and Community Development and Private Healthcare Facilities 2018 which is administered by the Ministry of Health, are two independent Acts. Furthermore, these legislations concern about elderly care. The Care Centres Act 1993 is more relevant to rehabilitative care centres and old folks home while Private Healthcare Facilities & Services Act 2018 governs standards of care concerning professionals such as in private hospitals. There is no legislation or specific legal tool to regulate retirement village. The concept of retirement village moreover should be differentiate with care homes or nursery looking after disabled elderly as retirement village caters elderly or retiree who is still fit and healthy and can take care of themselves with minimum continuum of care. The introduction of The Private Aged Healthcare and Services Act 2018 may shed some light in regulating retirement village, but it is yet to be enforced (AbHamid, 2021).

Literature Review

Introduction

Active ageing means improving the quality of life regarding one's health, social, physical and environmental features (Jumadi et al., 2019). This concept is common in several jurisdictions such as Japan, the United Kingdom and the United States of America, where there are more active engagements in terms of the contributions of their senior citizens towards the country's social and economic development. Such a trend is anomalous in Malaysia, which for the most part, regard that generation as a vulnerable and less productive group. Thus, there is a need to enhance efforts which are focused on benefiting senior citizens by preparing a

promotive residential setting for them to experience active ageing in a healthy environment. The concept of retirement villages is one such example that can be pursued to achieve this purpose.

The concept of retirement villages is not a foreign concept in Western countries. It was a recognized sector of property way back since the 1950's (Keogh & Bradley, 2002). In Australia, particularly in West Australia, the operators of retirement villages are either private companies or non-profit organisations with the help of the local authorities (Government of Western Australia, 2019).

Retirement villages may be operated by charitable or religious bodies, or public authorities or by commercial developers (Graycar, 1986). Types of retirement villages range from serviced apartments, hostel accommodation, to small unit houses. It can be a self-care unit whereby the operator provides management services. Retirement villages are new alternative solutions for senior citizens to have comfortable housing combined with care services and social activities (Lundman, 2020). This concept is increasingly popular in various parts of the world especially Australia, the United Kingdom and the United States (Osei-Kyei et al., 2020).

Meanwhile, legal definitions provided by the statutes from other jurisdictions are summarised in Table 1 below:

Table 1

Summary of legal definition of retirement village

Act	Definition of retirement village
Victorian Government's Retirement Villages Act 1986	A community where : - majority of residents are 55 years old or older or have retired from full-time work (or are spouses or partners of such people). - residents receive accommodation and services, that are not available in a residential care or elderly care facility, and at least one of the residents, as a contractual condition of entering the retirement village, paid an ingoing contribution that was not rent.
New Zealand legislation, under Section 6 of the Retirement Villages Act 2003	.A retirement village is a residential complex where residents have agreed to either occupy the buildings or receive services from the complex's operator. Residents in retirement communities are primarily or entirely over 55 years old or have retired from full-time employment
Section 3(1) of the Retirement Villages Act 1992 (Western Australia Legislation)	"retirement village" means a complex of residential premises, whether or not including hostel units, and appurtenant land, occupied or intended for occupation under a retirement village scheme or used or intended to be used for or in connection with a retirement village scheme.

Retirement villages should be distinguished from residential aged care facilities, nursing homes or care homes which provide treatment and care for the elderly. It must be made clear that the concept of a retirement village is not a place to care for the disabled or abandoned elderly, but where initiatives are taken to provide quality of life for the elderly. The residents of retirement village are still healthy and do not require much care (Hassan & Jiaqi, 2017). It is in between institutional care settings and home settings (Lundman, 2020). For such a project to be sustainable, a proper legal framework should be in place to protect the rights of the elderly as well as to encourage and facilitate housing developers and operators in setting up more retirement village projects for the benefit of the Malaysian elderly community.

Retirement village's concept falls between housing and care (Marenbon et al., 2016). It is a management intensive operating business with real estate components. The push factors for the elderly to opt to live in a retirement village is due to health concerns, death of spouse, house maintenance problem, lifestyle change and to be close to their children (Sufian & Mohamad, 2013). Meanwhile the pull factors that attract their interest are the environment, location wisdom and affordability. Retirement village does not only cater to independent living units, or village concept but also serviced apartments. The concept of retirement village comprised of three social trends which are medicalization of ageing, development of positive-ageing institutions and the improved lifestyle (Lim et al., 2019). In Australia, up to 63 per cent of their senior citizens prefer staying in retirement villages with professional care services.

Research on Retirement Village

There has been increasing interest in the research on retirement villages globally due to the increasing demand on retirement villages in various countries in the world (Osei-Kyei et al., 2020). However, the research less focus on the legal aspect that should be observed in creating retirement village in a country (Lundman, 2020). Thus, this research is significant to identify the legal features that need to be given attention for the concept to be sustainable in Malaysia. The increasing demand of retirement villages in various developed countries illustrates a potential market in Malaysia (Hassan & Jiaqi, 2017).

Retirement Village in Malaysia

There are a few retirement villages In Malaysia, which are The Green Leaf (Sepang), Ara Greens Residence (Ara Damansara), Green Acres (Ipoh) and Eden-on-the-Park (Kuching). While Eden-On-The-Park Sdn. Bhd. has adopted both the sale outright model and the lease model in Eden-on-the-Park, Kuching, Total Investment Sdn. Bhd. has adopted the lease for life model on Green Acres, Ipoh (Samsudin,2023). The government of Perak in 2019 has announced that they have made collaboration with Fukuoka City, Japan to initiate a retirement village project in Ulu Slim (Peraktoday.com, 2019). Land comprising 780 acres has been allocated by Perak state government for this project. In addition, Green Acres in Meru, Ipoh is also one of the pioneer projects of retirement village in Malaysia. It is a gated and guarded community, with senior friendly home consisting of six different villa designs. This project emphasises the community belonging by highlighting the values of friendship, support and care. They provide club house which consists of gym, movie theatre, karaoke lounge, saloon, library and other facilities. Therefore, the residents here enjoy a comfortable life with senior friendly facilities and at the same time may enjoy visits from their children and family occasionally. Thus, this scenario is different with care home where the elderly are placed there to be care by the personnel in the institutions. In Malaysia, homes for elderly consisting

of homes governed by Department of Social Welfare, Non-Governmental Organisations (NGO's) and private provider. Care Centres Act 1993 regulated these homes (Sulaiman et al., 2006). These homes are different to retirement village in terms of their operation and service provided.

For retirement village which are exclusively built for the Muslims, they are not usually named as 'retirement village' but rather 'Pondok Warga Emas'. Muslim retirement villages in Malaysia are growing in numbers but there are no data on the actual numbers as there is no existing mechanism as to date to register the Muslim retirement village under any government authorities. One of the pioneers is Kompleks Yayasan Al-Jenderami located in Dengkil, Selangor. They utilised the concept much similar to retirement village by providing accomodation for the elderly who volunteers to resides there to learn more about Islam. Majority of Muslim retirement villages do not obtain any assistance from the government as there is no specific procedure for them to register. Therefore, in financing the institutions, the fund comes from waqaf, zakat and sodaqah (Kamal et al., 2019). Their funding may also come from the monthly contribution or fees of the residents.

In addition, for Muslim community, ageing actively does not merely limit to having better social life, safe and comfortable living, or merely fulfilling basic needs but go beyond that in emphasising spiritual and religious activities (Jumadi et al., 2019). Therefore, religious space such as mosque is a need for Muslim retirement village in providing comfort in performing religious activities. With the spiritual and religious features, retirement village shall suit the active ageing among Muslims as studies illustrated that Muslim elderly were keener towards religious activities rather than leisure activities such as walking, exercising and so on.

Factors Attracting Elderly to Enter Retirement Village

Furthermore, elderly people are prone to 'empty nest' syndrome or feelings of loneliness due to several factors such as being alone or abandoned by children living elsewhere (Ahmad et al., 2019). The effect of this syndrome is that they will feel sad as well as experience stress or health problems both mentally and physically. Thus, retirement village is a good alternative for the elderly to find peace of mind. Besides that, by residing in this community, their time is well arranged to be occupied with Islamic lessons and interesting activities (Abu Bakar et al., 2016).

In studies identifying the factors that attract the elderly to stay in a Muslim retirement village is the intention to deepen their knowledge in Islam, and to occupy their time with Islamic practices (Majid & Azizmai @ Azmi, 2018). They learn various Islamic lessons ranging from tawheed, tasawwuf to Arabic language. The method used in their lesson depends on their ability and level of education (Mariam, A. M; Sahlawati, A. B.; Safinah, I. & Zabidi, 2017). Moreover, there are seven themes highlighted by a study done in Pondok Rahmaniah Lubuk Tupah in examining the needs of the elderly towards retirement village (Safinah et al., 2017). The seven themes are namely finance, knowledge, congregation, facilities, welfare and beneficial activities. These institutions attracted the elderly as their needs are fulfilled in terms of motivation, shelter and services, spirituality, encouragement, love and security. This shows that various necessities of the elderly can be fulfilled through having such institution for them.

Regulating Retirement Village

Retirement village has been a concept accepted and legislated in Australia. In Australia, retirement village is regulated by set of laws and regulations which are Retirement Village Act 1999, Retirement Villages Regulations 2000 and State Environmental Planning Policy (Seniors Living) 2004 (Sufian & Mohamad, 2013).

Generally, the arrangement between the operator and the resident of retirement village is on contractual basis (Government of Western Australia, 2019). Nevertheless, the main reason for choosing retirement village is the lifestyle provided and not the contract or fees. They are yearning for a life after retirement with safe environment, properly designed for easy ageing, having access to medical services and other facilities. All these make up a lifestyle that brings quality of life to their retirement period. Despite of high percentage of satisfaction of the residents in Australia on the retirement village services, there are issues concerning consumer protection due to complaints received by residents particularly on financial matters. Some of the residents, for instance, are not aware of the true cost of living in retirement village as it includes exit fees apart from the monthly service fees. Furthermore, it was reported that the expose made by a media in Australia on the exploitation of vulnerable residents by the retirement village industry shocked the whole country (Hassan & Jiaqi, 2017). Consequently, this led to the call for regulations reform in Australia. Thus, these unintended consequences should be catered through legal approach as to protect the residents' rights.

Nevertheless, in regulating a retirement village in Malaysia, it is important to emphasise that the aims of the regulation are not just to protect the residents, but also to encourage compliance by the developers and operators by assisting them with proper guidance on how to comply with the legal requirements.

As Malaysia does not have specific statute governing retirement village, when problems such on management of ownership of the houses emerge, the stakeholders must refer to the existing laws and regulations which are not customised to cater retirement village's issue. The diverse laws such as laws on strata title, ownership, and consumerism may cause difficulties and confusion and thus will not encourage more projects on retirement village to be set up in Malaysia in near future. Furthermore, these problems or issues should be prevented earlier before the launch of higher numbers of retirement villages which shall cause problems to the landscape of an ageing nation for Malaysia.

By legalising these institutions through a proper regulatory framework, the benefits shall be returned to the elderly since there is possibility of engagement between the institutions themselves or other institutions such as higher learning institutions. This was proposed by a study to promote long life learning that can be beneficial to the residents (Abdullah et al., 2019). Therefore, they will not just have Islamic classes or lessons from one or two teachers, but they may have opportunity to gain knowledge from academicians from higher learning institutions. On the other hand, the residents here who have high levels of education and experience in their working life in return may contribute to society by sharing their experiences and knowledge with the people. This community network shall be beneficial to the elder and younger generation of society.

Therefore, legal framework is needed to protect the residents' rights and to assist the operator in obtaining legal recognition. Through recognition or registration, these institutions would be entitled for any assistance and monitoring that would help to enhance the awareness of society as well as the readiness of the operators to embark on this project.

In relation to the above, in developing a Malaysian legal framework, examples of legal framework of other jurisdictions should be analysed to learn lessons and legal challenges that have been faced by these countries. Australia is appropriate to be taken as a benchmark country in this research as retirement village industry in Australia can be traced back in the year 1970s and was started to be legislated since 1980s (Osei-kyei et al., 2019). Retirement village in Australia furthermore is considered as one of the matured in the world. The increasing numbers of retirement villages in Australia which is predicted to accommodate 320 000 -350 000 residents by 2023 illustrate the impressive developmental growth of the concept in the country (Hu et al., 2017). Furthermore, the government of Western Australia has recently conducted retirement village law reforms 2019-2020 in enhancing the laws and regulations on their retirement village. Thus, Australia legal framework should be a benchmark for Malaysia. Lessons and challenges learned from experiences of this country governing retirement village shall be valuable for Malaysia.

In addition, the legal framework practised in United Kingdom may also be given attention. This concept was originated in United Kingdom for the past 30 years (Osei-kyei et al., 2019). This implies the vast experience the country has in managing retirement villages to accommodate the needs of their senior citizens. United Kingdom does not have a specific statute governing retirement village as what Australia is having. Retirement village in United Kingdom is governed under Care Act 2014 which focuses on protection and need of elderly. Therefore, in developing Malaysia legal framework, analysis of the practices done by these experienced countries shall be taken into consideration. The two types of legal regime by having a specific statute and secondly by having a general statute should be analysed in determining the suitable legal framework that is suitable for Malaysia.

Discussion

According to Ageing Asia Pte Ltd's Asia Pacific Silver Business Opportunities Report 2015, by 2025, in meeting 5 per cent of demand of retirement village, there must be at least 1000 retirement villages with each village has 200 single living apartments (King Wai, 2016). Therefore, predicting that more retirement village is to be set up in Malaysia in near future, regulating the village is a must in maintaining its sustainability. Thus, this study intends to analyse the elements and standard that should be included in the sustainable legal framework in regulating retirement village in Malaysia.

There is a need to regulate retirement village in protecting the rights of the occupants who are the senior citizens. The concept needs to be scrutinised as not to jeopardise their rights. The units they reside shall be ascertained in term of the ownership of the units. Some retirement villages practise the lease model while the others may choose outright sale model. One of the pioneers of retirement village in Malaysia, Green Acres in Ipoh opted the concept of lifetime leases (Majid & Azizmai @ Azmi, 2018). The occupant needs to pay lease deposit of RM310 000 and there will be monthly charged depending on the unit's size. The occupants will receive back their deposit when the lease is terminated. There are legal issues need to be

addressed here for example when there is death of the resident. There is no clear laws and regulations as to whether the lease deposit is terminated or the deposit need to be returned to their heirs.

In addition, there must also be guidelines as to the specifications needed in building retirement village. The units must be suitable for senior citizens which may not be found in normal housing projects. The architecture and design of the units must cater the needs of the elderly. Grab bars in the toilets, emergency bells, unobstructed passages, ramps and so on are examples of certain customised features that need to be given attention.

Other issues that need to be addressed in the legal framework is on the services provided to the residents, the cost of the service or any division of cost bear by the residents and the operator, the cost of any refurbishment and reinstatement of units, the procedure after the resident leaves or dies and ongoing charges when there is death of the resident (Victorian Government, 2018).

There are also issues on land use classification in getting approvals for the development of retirement villages. There is no clear laws and regulations as to categorise retirement village under residential, commercial or institutional. This is the dilemma faced by the operators as the ambiguous state of law regarding the status of the project will cause unproductivity and delay to the project. As a result, their developers or operators may be reluctant to proceed with the development of retirement village as their various unsettled legal issue surrounding this concept in Malaysia. A sustainable legal framework shall inject a drive for the operators to be more interested with the development of retirement villages in Malaysia.

Nonetheless, the laws and regulations will only be effective when there is robust enforcement that would encourage compliance by the operators. The regulatory authorities too must have adequate information and resources not just to enforce the laws through penalising any nonadherences, but also to provide technical assistance in encouraging compliance (Levine, 2015).

Thus, the salient features and characteristics of retirement village need to be identified to ensure that the main features of retirement village will be well-regulated. Ejau et al. (2021) outlined some features and characteristics of retirement village through systematic literature review conducted on retirement village. The features include the basic needs of senior citizens, such as ergonomic needs of senior citizens, elderly friendly design and barrier-free design. The panic button, grab bars, non-slip floor and so on should meet the basic needs of the senior citizens. The other features are the sustainability agenda which consists of environmental, economic and social sustainability. The other important characteristic of a retirement village is the location which should be not too far from their children and relatives so that they will always maintain good relationships with their family members. The affordability feature is also one of the salient features in developing retirement village. The entry charge, the continuous charge and departure fees should also be taken into consideration. Another feature is social activities which is one of the unique features that would provide opportunities for senior citizens to have active aging lifestyle. The features and characteristics are summarised in Figure 1:



Figure 1: Salient features of retirement village (Ejau et al., 2021)

From the salient features of the concept of retirement village in general, the features that may be regulated should also be identified in developing the legal framework for retirement village in Malaysia. The proposed legal framework must also take into account the features of retirement village as what has been experienced by countries such as Australia and New Zealand. The laws and regulations of retirement village shall be a good guidance for Malaysia in developing a Malaysian tailored laws and regulations on retirement village. Amongst the legislation that are relevant are The New Zealand Retirement Village Act 2003, Victorian Governments Retirement Village Act 1986 and Retirement Village Act 1992 (Western Australian Legislation).

The legal criteria that may be taken into consideration should not just be limited to management and administration, but also health, planning and safety, building guidelines, and consumer protection as can be seen in Figure 2:



Figure 2: Legal criteria of retirement village laws and regulations (AbHamid, 2021)

Therefore, there must be proper legal framework in governing retirement villages in preserving the rights of the elderly. In developing a legal framework for Malaysia, lessons and guidance from other jurisdictions may be taken into consideration. Since this concept has been in existence in Australia since 1970s and United Kingdom since 1990s, these countries' legal framework on retirement village are worth to be analysed. This industry in Australia for instance has been considered as one of the matured in the world (Osei-kyei et al., 2019). The difference of the legal regime utilised in both jurisdictions shall also be of helpful to Malaysia in developing a sustainable legal framework governing retirement village in Malaysia.

This study therefore proposes for the framework to include standards that need to be fulfilled which are basic needs, sustainability agenda, location, affordability, and social activities which may encourage active ageing. Meanwhile the legal framework shall consist of based on National Policy of Older Persons 2011 as the basis of the framework. There is a need for retirement villages to be regulated through specific act which is Retirement Village Act and supplemented by Retirement Village Regulations. This proposed framework is illustrated below:

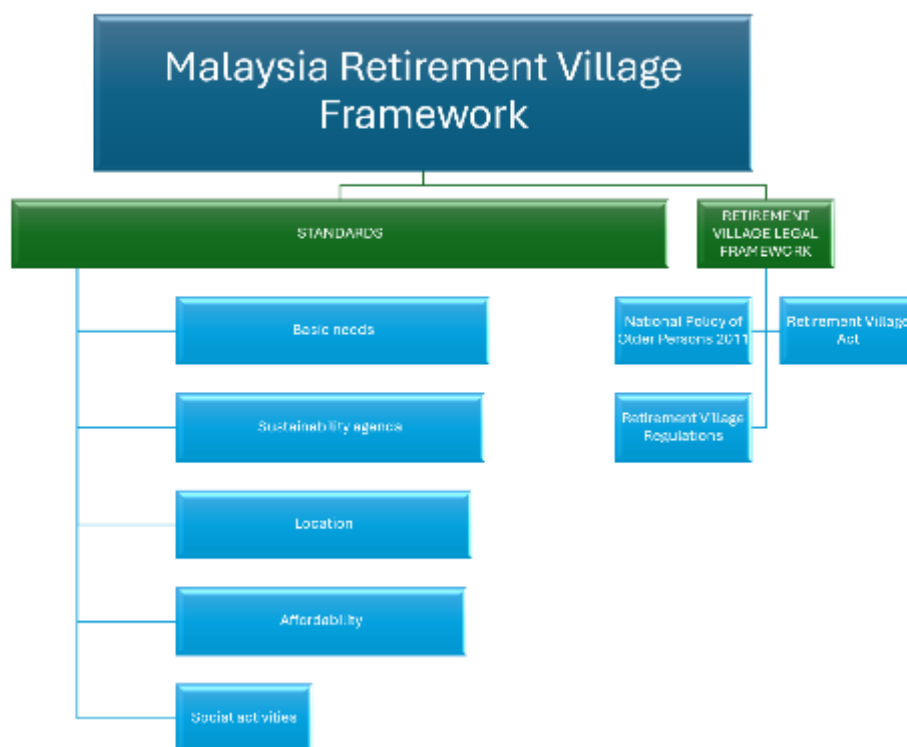


Figure 4: Proposed standards and legal framework

Conclusion

This study is significant in empowering the retirement village sector in Malaysia. This will directly benefit the stakeholders particularly the elderly community in Malaysia. In becoming an ageing nation by 2030, this study shall contribute to the social development of the Malaysia by assisting the country to prepare a proper avenue to encourage active ageing among the elderly population. As mentioned by Minister of Housing and Local Government, the long term impact from having a proper retirement villages for senior citizens can be seen when this idea may lessen the government burden in terms of cost for healthcare, hospitals

and medication as their health are being taken care at earlier stage preventing health complications in their retirement age (BERNAMA, 2021).

This study shall be beneficial to the law and policy makers such as Social Welfare Department under the Ministry of Women, Family and Community Development and local councils under Ministry of Housing and Local Government in enhancing the quality of elderly community in Malaysia.

In addition, a sustainable legal framework would invite more developers to endeavour into the project as they are more confident that it is sustainable. The growing awareness of the concept shall also be flourished, to correct the stigma that retirement village is similar to the concept of old folks' home. Preparing a suitable platform for senior citizens to have a quality life after retirement would be beneficial to the nation. The elderly will have the avenue to contribute to society and increase values to their lives.

Besides that, having a holistic legal framework to govern the establishment of retirement village in Malaysia is in line with Sustainable Development Goals (SDG) particularly on SDG 3 on good health and well-being, SDG 9 on Industry, Innovation and Infrastructure, SDG 11 on sustainable cities and communities and others on societal harmony and happiness. Retirement village will provide residentials with amenities that cater the needs of the elderly, combined with social activities and programmes that would contribute to good health and well-being of senior citizens.

For the sustainable development of "retirement villages," which will encourage healthy aging among the elderly and may be a good option for them to live in, Malaysia needs a well-structured legal framework (AbHamid, 2021). The "retirement village" will promote healthy aging in the elderly by encouraging an independent, active lifestyle and ensuring social interaction while ensuring safety and a healthy diet are not neglected, provided the legal framework is well-structured and enacted. Furthermore, the development of public spaces that enable senior citizens to maintain contact with the community and workplace without risk or burden, as well as the transition of retirees from larger family homes to smaller units in "retirement villages," will encourage older people's engagement in various activities.

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