

## Regulatory Barriers in Collecting Assessment Rates Arrears of Local Authorities in Malaysia

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### Abstract

Assessment rate is the only local tax form in Malaysia and it is a main source of income for local authorities. It is also may be considered as a potential source of income to replace grants from the Federal Government. Revenue from assessment rates is crucial for the local authorities to pay for services and maintenance in the local authority administrative areas, as well as for their effective administration and service delivery system. However, arrears of assessment rates of local authorities in Malaysia have become national issues and it becomes more challenging over time to recover the arrears. Local authorities are faced with various issues and problems in collecting and enforcing arrears of assessment rates. Thus, it is the aims of this study to examine the problems of rate assessment arrears collection and to identify regulatory barriers in collecting assessment rates arrears amongst local authorities. The scope of the study however is limited to the local authorities in the northern region of Malaysia only. The study employs socio-legal research where apart from library based research, questionnaires were distributed to legal officers, valuation officers and accountants from various department of local authorities. This study finds that the amount of revenue collected is decreasing due to loopholes of the law and ineffective enforcement of the law by local authorities. It is also found that the local authorities' officers lack of understanding of the law and procedures on the collection of assessment rates arrears. It is suggested that the law should be amended and the training should be provided for the improvement of the assessment rate collection.

**Keywords:** Local authorities; Assessment rates; Arrears; Malaysia.



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### 1. Introduction

Section 2 of the [Local Government Act 1976 of Malaysia](#) (Act 171) has defined "Local Authority" as any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 4 of the Federal Capital Act 1960. According to [Hussain and Brahim \(2006\)](#), local government's status and position is provided in the Malaysian Federal Constitution, whereby the Constitution states that the local government is under the power and control of the respective state governments. This is a special provision stipulated in the Constitution to administer, formulate policies, develop and control for the local government, which is known as The National Council for Local Government (NCLG). However, local government is a separate entity from the state government, having autonomous authority as permitted under the provisions of the law and also given the prescribed jurisdiction. It has the power to prosecute and may be charged, contracted and possessed property. It also manages and regulates effectively all financial and revenue allocations through rates collections, license fees, fines, annual grants and loan contributions and other revenue gains ([Zahari, 1991](#)). Local government autonomy can also be defined as "the freedom of the local government to recruit and manage its own staff, raise and manage its own finances, make by-laws and policies, and discharge its functions as provided by law without interference from the higher governments. This includes the political, financial and administrative autonomy. Financial autonomy of local government entails the "freedom to impose local taxation, generate revenue within its assigned sources, allocate its financial and material resources, determine and authorize its annual budgets without external interference", fiscal autonomy is therefore the bedrock and most important aspect of local government autonomy ([Okafor, 2010](#)).

[Local Government Act 1976 of Malaysia](#) defines property tax or assessment tax as "rates". The assessment rate is the only form of local taxation in Malaysia. In addition to being a source of revenue to the local government authority, it is also considered to be potential source of revenue to replace grants from the Federal Government. Revenue from the assessment represents more than sixty per cent of the resources of other local government non-tax revenue collection i.e. from business licenses and permits, rental of premises, compounds and other sources. The obligation to pay assessment rates is to enable the local authority to perform its powers for the public's benefit at large and not for any private benefit. Therefore it is called as a statutory obligation. This is coherent with the power of the local authority under Section 127 of the Act to impose rates "as is deemed necessary" as spelt out by the court

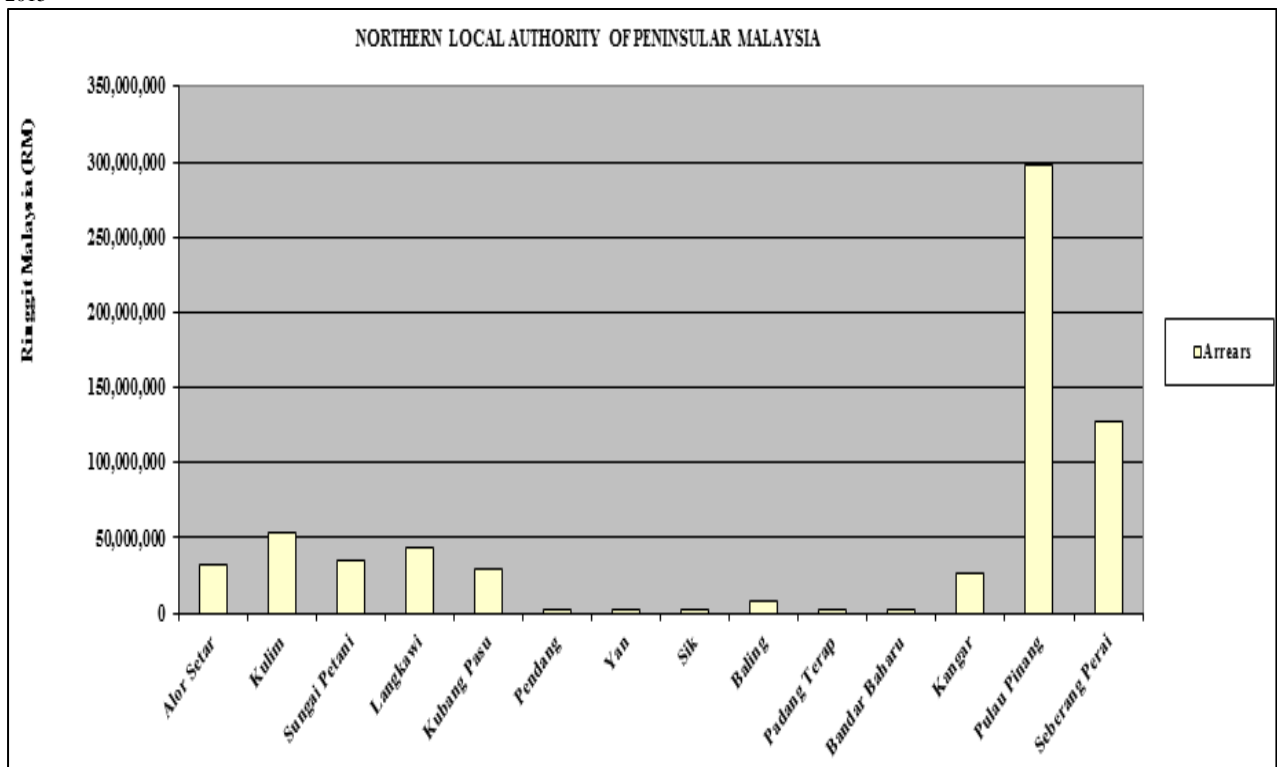
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in the case of *Shalimar Malay PC v Majlis Daerah Kuala Selangor (2015)*. Among the responsibilities of the local authorities on the residents are to provide basic amenities and good infrastructure such as road lighting and signage, maintenance and cleaning of roads, trenches and drainage, providing and maintaining public parks and recreation areas, providing and maintaining public cemeteries, providing bus stops, public halls, stadiums, developing and maintaining landscape morphology and maintaining public health *Pawi et al. (2011)*.

## 2. Problem Statement

The increasing incidence of assessment rates arrears occurred due to the weakness of the local authorities themselves in managing their assessment rates. Local authorities are often correlated with weak financial management and this is the factor that contributes to the failure of local authorities in achieving good assessment rates or revenue collection. The increasing assessment rates arrears become a constraint for local authority not only in development expenditures and provision of services but also disrupt the daily business of the smooth administration of local authorities (*Pawi et al., 2011*). Local authorities are faced with various issues and problems in action to demand arrears of assessment rates. It is important to know the extent to which the arrears of assessment rates had become national issues and should be taking seriously by all walks of life, especially leaders and should be addressed urgently to avoid further disputes and problems arising in the future According to Department of Housing Director, Kuala Lumpur City Hall (DBKL), Abdul Samad Lope Pihie said the problem of arrears of assessment rates is not due to the inability of the payer to pay but due to the irresponsible attitude of taxpayers. He further commented that the taxpayers also live in a luxury lifestyle which obviously show that are able to pay the tax. However, most paying rates often ignore their obligations by not clarifying rates (*Low, 2008*). The arrears of assessment rates in the northern region of Malaysia can be seen as shown in the table below.

**Table-1.** The Outstanding Arrears of Assessment Rates at the Northern Local Authority of Peninsular Malaysia from January 2011 to December 2015



Based on Table 1, we can see that the amount of outstanding arrears of assessment rates at the Local Authority of northern region of Malaysia from 2011 to 2015 was RM666,485,446.18. The highest rate arrears was Pulau Pinang City Council which recorded RM297,214,219.49 while the lowest rate was Pendang District Council at RM589,188.46. The amount of accumulated assessment rate arrears indicates that assessment rate arrears among local authorities in the north are significant issue and problem that need to be tackled immediately. Thus, it is the objective of this study to examine the problems of rate assessment arrears collection and to identify regulatory barriers in collecting assessment rates arrears amongst local authorities in the northern region of Malaysia.

## 3. Literature Review

Assessment rate is the only local tax form in Malaysia. In addition to being a source of income to local authorities, it is also considered as a potential source of income to replace grants from the federal government. Revenue from assessment rates represents more than sixty percent of other local authorities' resources which are non-tax revenue from business license, permit, compound, rental of premises, and other sources. However, the amount collected is decreasing due to increase amount of arrears. Indirectly, it affects the administration and service delivery system of local authorities in Malaysia.

According to [Tayib \(1998\)](#), the efficiency and productivity of local authorities mainly relies on the efficiency in collecting assessment rates and compliance of rate payers. He opined that the factors that contribute to the failure of local authorities in the assessment rates collection are the lack of commitment on the part of the employees, and that local authority employees must have high commitment towards their work. Secondly, he pointed out that the factors that contribute to the refusal of payers to fulfill their responsibilities is that they want the quality of service that provided by local authorities should be at par with the assessment rates they are paying. However, in his study, he does not touch on legal issues in the assessment rates demands. He only explains the power of local authority to impose assessment rates as provided in the [Local Government Act 1976 of Malaysia](#) .

[Hasim \(1998\)](#), highlights the assessment and collection of rates in the United Kingdom and the improvements that have been made by local authorities in the UK in regards to the collection. In the UK, assessment rates are also known as taxes imposed by local authorities in an effort to meet the needs of local budgets to be imposed on domestic and non-taxable properties. The problem of arrears of assessment rates is also faced in the United Kingdom. But there is slight difference between the UK and to Malaysia. In the UK, the action to claim starts by issuing a reminder notice to rate payer and ended by imprisoning a hardcore rate payer. The claim process is divided into two stages, namely, by obtaining a liability order from the court and the second stage is to select the appropriate enforcement method. However, the procedures and enforcement actions taken by local authorities in the UK are not much different from what is being done in Malaysia by issuing a notice, seizing the movable property and obtaining a court order for a sale order. In the UK, the court will imposed punishment against the rate payer aged 18 years and above who intentionally avoid or did not pay the assessment rates. Besides, the court will also imprison the rate payer if the value of the movable property on the stake is lower than value of the assessment rate.

## 4. Methodology

This study employs socio-legal approach, where both doctrinal and non-doctrinal methods are used. While doctrinal methodology focused on library based research to achieve the objective of this study i.e. to identify regulatory barriers in collecting assessment rates arrears, the questionnaires are used as the research instrument to collect data among respondents from local authorities in the northern region to examine the problem of arrears collection of assessment rate. Questionnaires is one of the techniques that are widely used in law research, whether the study is of a general theory or that it involves social problems, issues or questions. Using the questionnaire method, the researchers gather the information from the respondents about their ideas, opinions, beliefs, feelings, perceptions or knowledge of something ([Yaqin, 2007](#)). The respondents are legal officers, valuation officers and accountants from various department of local authorities in Penang, Kedah and Perlis. The questions are “close-ended” question. The items use the Likert scale which consists of three scales, namely, scale 1 for ‘Agree’, scale 2 for ‘Uncertain’ and scale 3 for ‘Disagree’. The use of these three scales is justified by [Birn et al. \(1990\)](#) stating that effective scales for research that examine understanding are between three and five. The Likert scale is used to test respondents’ understanding of the issues given. Data had been analyzed using descriptive method. Descriptive analysis is an analysis that describes the state of the data in general. As such, the explanation of the situation or the problem is simple and easier to understand. This method also clarify, summarize and provide data in an organized manner so that it is easy to read, understand and to conclude. It can determine the level of understanding of local authorities in enforcing the [Local Government Act 1976 of Malaysia](#) in order to claim arrears of assessment rates. The SPSS software is used to determine its frequency and cross tabulation.

## 5. Findings

Based on this study, there are few findings with regards to the governing law on assessment rate and the regulatory hurdles among the officers in implementing or enforcing the law. Also, the understanding of the respondents on the matter in enforcing the laws is also a cause for concern. Below are the subheadings on the findings from this study.

### 5.1. Ineffectiveness of Section 160 of Local Government Act 1976 in Handling the Matter of Transfer of the Holding

Referring to Section 160 (6) of the [Local Government Act 1976 of Malaysia](#) , local authorities have the power to prosecute sellers and purchasers if they fail to give any notice pertaining to the transfer and if held liable, will be fined not exceeding two thousand ringgit or imprisonment for a term not exceeding six months or both. However, a question arises to what extent that local authorities adopt and enforce these powers? Is the refusal to adopt and enforce these provisions due to low general penalty rates or vice versa? For instance, in the case of [Majlis Bandaraya Melaka Bersejarah v \(2014\)](#), the court dismissed the Plaintiff’s claim with costs. In this case, the Defendant is the registered owner of the master title (original title) known as lot number 162, Kawasan Bandar VII, Melaka Tengah, Melaka held under Grant No. Registration 5452. Through the sale and purchase agreement dated 21st December 1994, Defendant sold the parcels buildings which form part of a shopping complex built on the said land, known as level 1 to level 5 of Blocks B, to Image Klasik Sdn Bhd. Through the assignment agreement dated 5th October 1995, Defendant assigned to Image Klasik all rights and interests in such properties even though the strata title of the property has not yet been issued. In accordance with clause 6 of the agreement, Image Klasik is responsible for all assessment rates from the date of the completion. Upon the purchase the property, Image Klasik paid all the assessment rates. However, billing was still issued to Defendant and Image Klasik because Image Klasik did not submit Form I to transfer the title. In 2001, Image Klasik started having problems to pay the assessment rates of the

property. Image Klasik had made appeals to Plaintiff's for reduction of assessment rates by sending letters to Plaintiff. The Plaintiff, however, claimed assessment rates arrears against the Defendant as the registered owner of the property. The main issue is whether Defendant is liable to pay assessment rates from December 2004 to March 2010. Referring to the Supreme Court decision in the case of *Kuala Lumpur City Hall v. Govindasamy Suppiah (1990)*, the apex court interprets "owners of the holdings for the time being" as the "current owners of the holding". Therefore, in this case, Image Klasik is held to be the owner of the property and is liable to pay assessment rate arrears, not the Defendant.

Based on the decision in the *Majlis Bandaraya Melaka Bersejarah* case, local authorities should take up this matter seriously because local authorities are endowed with the power to prosecute under Section 160 (6) of *Local Government Act 1976 of Malaysia*, which, if the seller and buyer failed to inform local authorities regarding the transfer, they may be convicted and upon conviction, may be fined not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or both. Apart from the power to prosecute, local authorities also have the authority to compound sellers and buyers. Power to compound is vested in Compounding (Local Authorities) State of Kedah 1983 By Laws where the maximum compound that can be imposed is five hundred ringgits. However, it is the finding of this study that the power is rarely exercised by the local authorities.

## 5.2. Wrongly Interpret the Meaning of Fee under Section 147 of Local Government Act 1976

According to Section 147 of *Local Government Act 1976 of Malaysia*, local authorities have power to fix such fee for any rates which remains unpaid at the end of February or August. It is the finding of this study that most of the local authorities misinterpret the meaning of the fee. Local Authorities interpret the meaning of the fee as a penalty or late payment and the fee keep repeating and accrued based on the arrears of assessment rates.

Referring to the case of *Majlis Perbandaran Pulau Pinang v. Datuk Krishna Kumar Tn Sharma (1999)*, the court held that Plaintiff (i.e. the MPPP) has no power under the Act to impose such repeating fee for the issuance of notices and warrants of arrest to the empty holding. Plaintiff can only impose one-time fee for the issuance of notices and warrants of arrest, and subject to Form E and Form H had been served and completed before such fee can be imposed. In this case, Faiza Thamby Chik J (as he then was) stated that based on Section 147 (1) of *Local Government Act 1976 of Malaysia*, local authorities can fix such fee to be imposed at the second half of the unpaid assessment rates but the fee must be proportionate and may be imposed only once. Without taking into consideration whether the arrears of rates have been paid or not, local authorities are not empowered to impose such fee either through a fine or late penalty. Local authorities can fix such fee from time to time and may amend the fee upon discretion based on the circumstances and strictly cannot impose or charge twice on the arrears of rates.

## 5.3. Ineffectiveness of Summary Action Taken by Local Authorities to Recover the Arrears through Section 148 of Local Government Act 1976

The assessment rates will be considered as arrears if the owner of the holding fails to pay the assessment at the end of February or at the end of August. By virtue of Section 148 of the *Local Government Act 1976 of Malaysia*, local authorities should exercise all the mechanisms that have been described in that section in order to recover the arrears. Local authorities have to adhere all of procedures strictly. Notice in Form E will be served to the owner of the holding who fail to pay the assessment rates at stipulated time. He or she should settle the arrears within fifteen days from the date of the notice served on him. If fifteen days lapsed and the owner of the holding fail to settle the arrears, local authorities has the power to issue a warrant of attachment under Form F. Such warrant enables the local authorities to value the movable property at the holding. During valuation, if the valuation of movable property is more than the arrears of rates, the movable property will be seized and inventory in Form G will be handed over to the owner of the holding. If the valuation of movable property is less than the arrears, seizure actions could not be implemented and notice in Form H must be paste in a conspicuous place at the holding. Local authorities must continue with the civil action in order to recover the arrears of rates.

Reference on this matter can be made to the case of *Datuk Bandar Kuala Lumpur v. Cheang Kok Yuen (2014)* where court rejected Plaintiff's claim because court states that Plaintiff had issued Form E, F and H, but there is no evidence that Plaintiff's officer make an inventory in Form G to the property attached and served it to Defendant. Plaintiff's officer argued that value of the movable property is lesser than the arrears. Therefore, there is no movable property to be attached. Accordingly, court holds that Plaintiff has not fully complied with the requirements which had been laid down under Section 148 of *Local Government Act 1976 of Malaysia*. Therefore, Order for Sale under Section 151 of *Local Government Act 1976 of Malaysia* is not granted by the court.

As such, from the above case, it is a dilemma on the part of the local authorities when the valuation of movable property is less than the arrears of rates and they are not able to proceed with the seizure action and have to return to office and only commence with civil action. Due to this dilemma, it seems that local authorities do not have powers and it affects the credibility of local authorities, especially in the eyes of the public. Other issues that arise during the summary action is when the holding is unoccupied and the owner or the occupier of the holding could not be traced. If these happened, local authorities are not allowed to enter the holding and can only paste Form H. Due to this problem, local authorities have to bear the costs such as logistic, food and others which had been spent during the operation. In other words, the problem of procedures hinders effective collection of the arrears.

#### 5.4. Action to Recover the Arrears of the Assessment Rate is barred by Limitation Act

When the action to recover the arrears of assessment rates fail by way of Section 148 of Local Government Act 1976, local authorities must proceed or continue to take civil action by virtue of Section 151 of the same Act. The cause of action for arrears of assessment rates must not exceed 6 years from the date of its accrued as provided under Section 6 (1) (d) of the Limitation Act 1953 or otherwise, the action is time barred. For instance, in the case of *Majlis Perbandaran Pulau Pinang v. Tropiland Sdn Bhd (2003)*, the Defendant failed to pay the arrears of rates in respect of his property for the period from 10 April 1993 to 31 December 1999. Plaintiff had commenced the proceedings by virtue of Section 151 of [Local Government Act 1976 of Malaysia](#) to attach and sale of property in order to recover the arrears of rates along with the fees. The Senior Assistant Registrar of the court gave the order for the attachment and sale of the property. The Defendant appealed against the order on the grounds that: (i) the whole proceeding is void because Plaintiff adopted the wrong procedure; (ii) there is no liability for the Defendant to pay the amount claimed because he did not receive a bill of assessment for a half years for the period between 1993 and 1999; and (iii) the claim is barred by the Limitation Act 1953. The Plaintiff had claim the amount of RM835,264.07 from the Defendant. In this case, court had decided to reject Defendant's appeal. The arrears is from 10 April 1993 until 31 December 1999 and the action was filed by Plaintiff on 10 April 2000. Defendant had made payment on 29 February 2000 amounted to RM579,641.27. In accordance with Section 26 of the Limitation Act 1953, court held that Plaintiff's claim is not barred by Limitation Act 1953.

It is also found that the local authorities are not keen on initiating civil action because of the amount of arrears is small. The high cost for civil proceedings normally exceed the amount of arrears that are due. For example, the cost of civil suit starting from filing a writ summons to judgment cost more than one thousand five hundred ringgits whereas the arrears of rates only one thousand ringgits. When local authorities start to recover the arrears of rates by way of civil action, it is already or nearly come to six years of Limitation Act 1953. Therefore, local authorities had no choice or option but to write off the arrears of rates.

#### 5.5. Lack of Legal Understanding Among Officers of Local Authorities in regards to Action to Recover the Arrears of the Assessment Rate

Table 2 shows the questions which had been asked in a questionnaires and had been divided into 10 items according to their theme, while the answers and responses from the respondents are as in Table 3.

Table-2. List of Questions

Item	Question
1.	Assessment rates shall be payable twice for a period of one year which is in January and July
2.	Assessment rates will consider as arrears if remain unpaid at the end of February and August
3.	Do you agree if a penalty is imposed to the owners of the holdings if he/she pay late?
4.	Notice E can serve by hand instead by post
5.	Notice E needs to be serve to the owner of holding itself. Is tenant or occupier able to receive Notice E on behalf of the owner of the holding?
6.	Form F is a warrant of arrest which allows local authorities to seize the movable property. During confusion, Form F needs to be handed over to owner of the holding. Do you agree with this statement?
7.	Form G is an inventory used to record movable property which had been seized during confiscation. Form G must be handed over to the owner of the holding even if the movable property is insufficient to seize. Do you agree with this statement?
8.	During confiscation it find out that the moveable property is insufficient to seize and the owner of the holding not present at that time. Form H is not handed over to owner of the holding but affixed to the conspicuous place at the holding. Do you agree with this statement?
9.	Local authorities only have SIX (6) years to claim arrears of assessment rates through civil actions. Do you agree with this statement?
10.	Local authority has power to compound against seller, purchaser and the heir of the deceased in the absence of the transfer of holding. Do you agree with this statement?

Table 3 shows that the understanding of respondents regarding law and procedure to collect arrears of assessment rates. There are all 10 items which had been asked in a questionnaire. Below is the cross tabulation between legal officers, the management and the enforcement officers in regards to provisions and procedures as provided in the [Local Government Act 1976 of Malaysia](#) on claims arrears rates.

**Table-3.** Cross Tabulation between Respondents Job and Procedures to Claim Arrears of Assessment Rates

Item	Job	Answer		
		Agree	Uncertain	Disagree
1.	Legal Officer	13(92.9%)	-	1(7.1%)
	Valuation Office	13(92.9%)	-	1(7.1%)
	Accountant	14(100%)	-	-
	Total	40	-	2
2.	Legal Officer	14(100%)	-	-
	Valuation Officer	12(85.7%)	1(7.1%)	1(7.1%)
	Accountant	13(92.9%)	-	1(7.1%)
	Total	39	1	2
3.	Legal Officer	13(92.9%)	1(7.1%)	-
	Valuation Officer	14(100%)	-	-
	Accountant	14(100%)	-	-
	Total	41	1	-
4.	Legal Officer	14(100%)	-	-
	Valuation Officer	12(85.7%)	1(7.1%)	1(7.1%)
	Accountant	14(100%)	-	-
	Total	40	1	1
5.	Legal Officer	13(92.9%)	-	1(7.1%)
	Valuation Officer	10(71.4%)	-	4(28.6%)
	Accountant	13(92.9%)	-	1(7.1%)
	Total	36	-	6
6.	Legal Officer	8(57.1%)	-	6(42.9%)
	Valuation Officer	11(78.6%)	1(7.1%)	2(14.3%)
	Accountant	13(92.9%)	-	1(7.1%)
	Total	32	1	9
7.	Legal Officer	3(21.4%)	1(7.1%)	10(71.4%)
	Valuation Officer	8(57.1%)	4(28.6%)	2(14.3%)
	Accountant	11(78.6%)	1(7.1%)	2(14.3%)
	Total	22	6	14
8.	Legal Officer	9(64.3%)	1(7.1%)	4(28.6%)
	Valuation Officer	6(42.9%)	5(35.7%)	3(21.4%)
	Accountant	7(50.0%)	3(21.4%)	4(28.6%)
	Total	22	9	11
9.	Legal Officer	7(50.0%)	-	7(50.0%)
	Valuation Officer	5(35.7%)	4(28.6%)	5(35.7%)
	Accountant	4(28.6%)	4(28.6%)	6(42.9%)
	Total	16	8	18
10.	Legal Officer	9(64.3%)	-	5(35.7%)
	Valuation Officer	9(64.3%)	3(21.4%)	2(14.3%)
	Accountant	5(35.7%)	5(35.7%)	4(28.6%)
	Total	23	8	11

Table 3 summarizes the understanding of the respondents regarding the procedures to collect arrears of assessment rates. Each item that had been asked and responded, represents the procedures which local authorities must comply in order to collect assessment rates. Therefore, based on the data, it may be concluded that local authority officers lack of knowledge and are not well verse on the procedures to enforce and to collect arrears of assessment rates.

## 6. Conclusion

Based on discussion at the above, it is clear there are provisions of the law that hinders effective collection of assessment rate. Besides, there is also legal provision that caused the collection of the arrears become ineffective. Furthermore, there are also lack of legal and procedural knowledge on the part of local authority officers which consequently caused the arrears of assessment rates is a problem to collect. The role of the officers of the local authorities are very important, as stated by [Yaacob and Abas \(2011\)](#) that the employees is deemed to be critically important in a service organization like local authorities, because delivering service involves mutual interaction between personnel and client, and the service delivering process is customized to meet heterogeneous needs of clients but within the allowable framework of a local authority. It is the important to improve service to the public especially at the local government level. The local authority officers must possess good quality, capable, skilful and as well as having positive moral values and work ethics, so that it can improve the effectiveness, efficiency and productivity of the organization including that in the local government. Apart from that, the government should be more proactive to strengthen, improve and make amendments to the present Act which is Local Government Act

1976, so that it will be more comprehensive and suitable with current practice or at par with another country like United Kingdom in terms of assessment rates.

Thus, to ensure the success of local authority, all units at the local authority administration must be committed to collect arrears of assessment rates. It would be difficult to achieve zero arrears of assessments if the local government administrators hardly struggle for it. At the state and federal government level, more attention and research had been carried out, unlike that at the local government level where empirical research were not that much being done. Most research is done on the reform of local government, leadership, power and politics. Due to that, details information about the effectiveness and result of the collection of assessment rates is very limited. Hence, the need to undertake research in relation to the effectiveness, efficiency, productivity aspects as well as better service delivery system of the local administration is imperative. The result of the study can be summarized as such, regulatory barriers of collecting arrears of assessment rates at local authority need to be improved and be paid more attention. This is because researchers are optimistic that the local authority could provide better services to the public at large if rate payers also give their cooperation and fulfill, their obligation to pay assessment rates to local authority.

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