

Land Administration: Issues and Way Forward

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ABSTRACT

The *National Land Code 1965* is the highest law in Peninsular Malaysia in respect to land administration. It is a codification of laws covering various important aspects of rights and powers over land. This paper will discuss the issue of squatters, temporary occupation of lands and corruption in land administration with respect to the rights of stakeholders. The research methodology involves case analysis to analyse the duly decided and reported cases which had led to amendments in the *National Land Code 1965*. The study reveals that there are evident flaws in the administration of land in the arising legal issues highlighted. This study will also highlight some of the proposed improvements to improve both land administration and land law to protect the rights of parties who have interests on lands.

Keywords: Issue of land administration, *National Land Code 1965*, weaknesses and recommendations

INTRODUCTION

The *National Land Code 1965* (NLC) is the main law governing land matters in Peninsular Malaysia. It was first enacted in the '50s. NLC and based on the *Land Code 1926* which was further updated and supplemented. The NLC currently in force is based on the Torrens system or Title Registration System. Torrens system is a title-based system in which registration guarantees the principle of indefeasibility of proprietary rights of land owners. This system was created to solve the problems of uncertainty, complexity and costs arising out of the previous system which was earlier introduced (Maidin et al., 2008).

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ISSUES IN LAND ADMINISTRATION

Among the issues that arise due to weaknesses or loopholes in the laws relating to land administration in Malaysia are as follows:

Temporary Occupation Licence of Land (TOL)

Under the NLC, the disposal of government land is divided into two, namely the disposal by way of alienation and the second is disposal other than by alienation. Disposal of the first type is found in section 76 which empowers the State Authority (SA) to grant freehold titles or titles for specific timeframe, while for the second method of disposal, the SA can provide reserve over lands, grant temporary occupation license, permit the extraction of rock and allow the use of air space over government land and land reserves (Buang, 2010, p. 51). Disposal by way of temporary occupation falls under the second method.

TOL is a temporary license or permit granted by SA for specific purpose and time limit. It is in short, a form of approval to enter a land and work on it (Abia Kadouf, 2011). Therefore, the TOL lands remain as State lands and there is no guarantee that the land will be transferred to the licensee who enjoys the TOL. In the case of *P & A Systech Sdn Bhd v. the State of Kedah Darul Aman* (2015), although the court acknowledged the plaintiff had a good cause for action it was nevertheless dismissed since the filing of action was time-barred. In this case, the court found that the instruction issued to the Plaintiff was actually made at the State

Exco Meeting which was conveyed to the Plaintiff through the Land Administrator. The Plaintiff therefore did not have the right to appeal against the instruction under section 418 of NLC since the instruction did not originate from the Director of Land Office or the Land Administrator himself. This case shows that there are limitations a TOL holder has in challenging the instruction issued by the SA.

The question whether TOL should continue to exist under NLC does not arise, the more important question is how to make it more effective and beneficial to the people.

Squatters

Under the NLC, occupying lands belonging to others and government lands is an offence. The latest 2016 amendment introduced higher penalty of RM500,000 and imprisonment of up to five years if squatters occupy government land (Buang, 2016).

The position of SA as the sole and absolute owner of all lands and section 48 of NLC which prohibits illegal land occupation has provoked a socio-economic problem because acquisition of state land by adverse possession has been statutorily precluded by the NLC. In *Sidek & Ors v. Perak State Government* (1982), it was held by the High Court that the appellants did not have cause to action against the respondents as they were squatters, and squatters have no right either in law or in equity.

In *Mat bin Che Pa & 54 Yang Lain v. Felcra Berhad* (2015), the plaintiff had no

cause for action as they failed to defend their interests as settlers and were considered as intruders without a valid land title.

Corruption in Land Administration

Statistics of arrests made by the Anti-Corruption Commission from 2011 until January 2016 as per Table 1 below shows the involvement of civil servants in corrupt activities.

Table 1
Statistic of arrest by Anti-Corruption Commission from 2011 – January 2016

Year	Civil Servants ¹	Public ²	Total
2011	323	595	918
2012	288	413	701
2013	170	339	509
2014	224	328	552
2015	398	443	841
2016	471	468	939

Source: www.sprm.gov.my

Note: ¹Top Management, Professional and Supporting groups; ²Private persons or citizens, Council members and politicians

Table 1 indicates the involvement of civil servants in corruption crimes which is increasing quite sharply in 2015 (174 cases) than in 2014. It further transpires that involvement of civil servants in such crime has reached to a level of concern as this scenario is deeply unhealthy if not immediately overcome. In *Lee Siew Ken v. Director of the Selangor Land and Mines* (2015) the abuse of power by officials in the Department of Land and conspiracy with third parties who cheat ('fraudster') on the sale of land was exposed.

According to Zameri and Azmin (personal communication, 8 July 2011) there would be possibility for occurrence of corruption when such people who are involved used such opportunity to work together in order to fulfil their false aim to procure unjust enrichment due to their excessive rapaciousness. It obviously indicates that corruption basically occurs due to personal desires. Personal character may sometime become the pushing factor for a person to give or receive bribes. Bureaucracy is also said to be a factor that lead to corruption in land administration sector. The corruption case is rampant in the Land Office. Delays in the approving applications, casual procedures of control, as well as bribery, leads to the practice of paying bribes for faster service from the land office.

RECOMMENDATIONS

Disposal of land in Islam takes place through the concept of *ihya al-mawat* or exploring uncultivated land by Muslims. This means those who explore and cultivate a plot of uncultivated land would be entitled to its ownership. The suggestion for *ihya al-mawat* to be implemented through NLC is not new. Awang (1994) highlighted several amendments to apply the concept of the "Approved Application" (AA) through NLC and allow the individual who cultivates the land to own it according to the principle of *ihya al-mawat*. In order to implement the AA concept, section 76 needs to be amended to authorise the SA to allow occupation of State lands in line with

AA, to manage annual rents, and that the land must be developed or cultivated within three years and cannot be transferred. If the land is successfully developed or cultivated within the prescribed period, the title can be issued under the principle of *ihya al-mawat*. According to the latest *National Land Code (Amendment) Act 2016*, section 66 (2)(a) and (b) states that nothing in this section shall authorise the Land Administrator to issue TOL in respect any such river and up to fifty metres of the bank of any such river, and any such lake or spring and up to fifty metres from the edge of any such lake or spring.

The latest amendment involving TOL under the NLC has no indication for a proposal to introduce new statute such as Landlord and Tenant Act to solve problems arising from a tenant-landlord relationship. In the United Kingdom the *Landlord and Tenant Act 1985* had consolidated certain provisions pertinent to both the landlord and the tenant such as the disclosure of identity, interests, remedies for breach of contract, etc. Protection is also afforded to both parties statutorily and one cannot contract out of these statutory provisions. The said statute spells out all the rights, duties, obligations and remedies of the parties that can summarily be affected and avoiding, lengthy and convoluted court processes.

In terms of penalties in cases of corruption, section 13(1) of the *Prevention of Corruption Act 1960* enforced in Singapore, for example empowers the Court to order the recipient of a bribe to pay a fine equivalent to the amount of feed received by him other than a punishment in the form of fines

and/or prison. This shows the recipient of bribe should not enjoy any benefits from the corruption itself. Therefore, severe punishment should be imposed on the offenders so that it would serve as lesson to the public.

CONCLUSION

NLC which is the supreme law on land administration in the Peninsular Malaysia covers many important aspects of land should be amended to ensure justice and to strengthen the law of the land in relation to its administration. Cases involving fraud, abuse of power and lack of law enforcement can indirectly affect the image and reputation of the State's land administration. The matter should be given serious attention. In addition, the full commitment is necessary on the part of the enforcement to ensure the implementation of law is fully enforced. From a legal position amendments made to provisions of laws and regulations are necessary.

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