

ADEQUACY OF COMPENSATION IN LAND ACQUISITION PROCEEDINGS FOR PUBLIC INFRASTRUCTURE

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Abstract

The Federal Government as well as State Government through its various agencies responsible for any development for public purpose. Acquisition of land includes compensation costs that need to be paid to the interested aggrieved parties. The issues of compensation are highly arguable in the proceedings as well as in the court. This article uses qualitative methods through interviews and document analysis. This study found current compensation is legally based on the current legal proposition. However, there is a need to further explore the adequacy of compensation in land acquisition proceedings.

Keywords: *land acquisition, public purpose, compensation.*

INTRODUCTION

Land acquisition is one of the options to acquire the required land for development, especially for public purposes. The potential land will be marked and surveyed for that particular development purpose. When the land is finalized, the Federal Government through the Department of Director General of Land and Mines (DGLM) will process the acquisition of the specific land mentioned. In cases of development under State Authority, the State Director of Land and Mines Office will be responsible for the land acquisition. For example, for the project for the construction of the railway route, the government through the Ministry of Transport, for example, will finalise the route track and submitted it to DGLM's office for land acquisition especially acquisition under Land Acquisition Act 1960 [Act 486].

The specified land will then be acquired if falls under individual titles. As per Article 13 of the Federal Constitution, its emphasizes inter alia that there is no land acquired by the government without adequate compensation. As such, the government needs to allocate a certain amount of development expenditure for the acquisition process including the payment of adequate compensation to the landowner and the aggrieved parties within the total development and construction cost.

The compensation amount is usually depending on the valuation made by the Valuation and Property Services Department (JPPH). The compensation shall consider the market value of the land, severance cost, injurious affection value, and other expenditures related to the land acquisition. However, it must not include the loss of earnings and value of the vegetation as it is included under the land value. Nevertheless, any structure on the land can be considered for compensation.

METHODOLOGY

The research was carried out in a qualitative method. The method includes the research on the primary sources from the interview of an informant from the related department such as the Valuation and Property Services Department, the Department of Director General of Land and Mines, and the state Land and Mines office.

Besides, the research also examines the secondary sources of written documents. These include documents such as books, journals, case reports, legal reports, annual reports, statutes, policies, articles, and materials both from printed publications and from the internet.

Not to mention the tertiary sources as well, the previous research and earlier findings are also investigated and reviewed. Data gathered is analysed through the comparative method.

RESULT AND DISCUSSION

Adequacy Of Compensation

The question of adequate compensation is the point of argument and contentious matter. The current situation under the law and practices through several rules and regulations are limited to the established ground stated in the Land Acquisition Act 1960 [Act 486]. However, through amendment of the law in the National Land Code [Act 828] (NLC), Strata Titles Act 1985 [Act 318], and Land Acquisition Act 1960 [Act 486], there are several emerging grounds that are hardly considered in the valuation for compensation especially rightful enjoyment of underground land, airspace and intangible element such as noise compensation. The Land Acquisition Act 1960 [Act 486] only mentioned specific items which can be compensated by the land administrator during the hearing and enquiry for the payment of compensation of the acquired land.

As amendment of the legislation takes place for a certain area in construction and development in NLC, Act 318 and Act 486, the heading of the payment for compensation needs to be reviewed legally and practically. Current development

which involves the new approach to construction may lead to an extra grievance for the parties involved, especially the landowner. The approach of underground construction such as tunnels and acquisition of part of strata scheme for public amenities and infrastructure had given a new paradigm in adequate compensation regime.

In addition, in comparison to other countries, it is found that several countries in Europe had provided extensive compensation such as noise compensation towards the development project proposed. For example, the construction of housing development in the United Kingdom recognized the compensation for noise pollution. On the contrary, there is also a discussion on the noise compensation shall not be paid. The discussion seems to view that the traffic noise compensation will open to bigger uncertainty (Setter D.M, 1980).

As such, these emerging claims had been coined by several landowners and aggrieved parties that need to be addressed for upholding the adequate compensation principle mentioned under the Federal Constitution of Malaysia.

Current Legal Framework

Land Acquisition is the prerogative act of the government as prescribed under the Land Acquisition Act 1960 [Act 486] as well as Federal Constitution. Article 13 of the Federal Constitution provides that the government can acquire the property from the registered owner in the course of public purpose. The Article says:

“Rights to property

13. (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.”

In the case of land acquisition, the Land Acquisition Act 1960 [Act486] has fulfilled the first limb of Article 13 of the Federal Constitution. The law related to the acquisition of the land seems to deprive the rights of the landowner or the interested parties therein. Thus, Act 486 is in place to fulfil the requirement. Currently, all land acquisition processes for government construction or projects especially for public purposes are conducted by the Department of Director General of Lands and Mines (Federal) (DGLM).

The second limbs of the Articles require payment of compensation in the process of land acquisition. The heading for compensation has been stipulated in Act 486 itself

under the First Schedule. Additionally, the payment of compensation is also subjected to the term of reference which is mentioned by the circular of DGLM. Payment of compensation among others includes injurious affection and severity, house and building, and the cost needs to be borne immediately for resettlement such as rent (Manual Pengambilan Tanah, 2008).

The market price issue is also one of the contentious matters in deciding the value of compensation. The market price has been addressed as early as 1984 when the court said that it depends on the “willing buyer and willing seller” concept. There are several other issues that relate to the market value such as partial payment to the registered proprietor because of a re-surrender for the right of way. This partial payment however is not the right practice although there are no cases decided on the matter yet.

Any other compensation, which is not covered by Act 486, requested by the registered proprietor is denied. It is worth to emphasise that loss of earnings is not a factor to be considered as an amount for compensation. Similarly, vegetation on the land also is not to be calculated separately. Though the environmental aspects are not heavily mentioned in the compensation, there is certain case request for noise compensation.

It seems rather difficult to access noise value and amount of compensation. Usually, noise pollution can be claimed under a civil suit against the developer and any compensation brought before the court (Li Rita, 2011). As the land acquisition is mainly led by the government, this issue is abandoned. Similarly, the issue of ex gratia may be applied in this situation as given and granted to the squatters within the vicinity of the project sites.

Adequate compensation which is mentioned earlier under Federal Constitution is now moving to a new phase where several demands have been made by the developer on the ground. Cases on the intangible value for compensation are usually failed to be recognized. Whether in the initial process in the land office or appeal cases in the court of law. For example, cases of noise pollution claim had been struck out as it seems to be no merits¹. However, the judgment did not refer directly to the noise pollution issue but rather the vicinity and neighbourhood of it to construct the market price value as it is 2 kilometres away from the intended acquired land. As such, there is no noise pollution compensation granted in the course of land acquisition.

¹ Yu Kuan Huat & Ors V. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2011] 1 LNS 1596

Regarding noise pollution, the current legal framework is governed by the Department of Environmental. Section 23 under The Environmental Quality Act 1974 [Act 127] stipulates that:

“No person shall, unless licensed, emit or cause or permit to be emitted any noise greater in volume, intensity or quality in contravention of the acceptable conditions specified under section 21.”

As such, DOE had come out with guidelines on *“The Planning Guidelines for Environmental Noise Limits and Control”* in 2004, reprinted in 2007, and revised further in 2019.

It states that approval of projects subjected to Environmental Impact Assessment (EIA) procedures and requirements usually include maximum permissible noise limits in the affected areas that must be complied with during the construction phase and/or operation of the project. Further, the guidelines provide that the maximum permissible sound level by receiving land use for planning and new development in a residential area is between 60 dB to 65 dB during daytime and night (MESTECC, 2019). However, this maximum level is only a guideline that the Local Authority can impose on the planning permission and approval. Thus, it is not legally supported by laws.

Meanwhile, the meaning of adequate compensation has different interpretations in different countries. In the United States, the market value of the subject property is generally held as just compensation for the dispossessed owner. In the UK, compensation is based on the principle of value to the owner that is made up of market value together with other losses suffered by the claimant. This principle is broadly followed in most Commonwealth countries and regions such as Australia and Hong Kong.

In China, the current compensation laws are far from adequate, due to the just terms compensation principle not being in a place which has caused great discontent. In Germany, a similar principle seems to be adopted in Malaysia’s Federal Constitution and the Land Acquisition Act 1960 (Schmidt-Eichstaedt, Gerd, 2007). Similarly, in the Netherlands, they differentiate the compensation for expropriation, which is similar to land acquisition, from the compensation of planning law (Hobma F, 2007).

Noise Compensation

Noise compensation under land acquisition is not a good ground (Che Roslan, 2021). As such, there is no trace of requirement found in Malaysian legislation and

judgment. It is hard to find the specific compensation judgment for compensation for noise under the land acquisition process. This can lead to misunderstanding of the issue and open for discussion. As opposed to the claim under civil suit particularly tort, the requirement of noise compensation is depending on the tolerable value.

Nevertheless, it is discussed also that the term compensation is used in several other statutes. It has a well-understood meaning in respect of workers' compensation. It has a different meaning from damages in the law of contract and tort. When used in the context of deprivation of land it means to *recompense or amends* (Anuar Alias, 2006).

Therefore, the requirement for noise compensation in Malaysia may be derived from non-compliance with the requirement of the maximum permissible level of noise. The possibility of including the compensation for noise compensation is hardly proven and less discuss within the scope of land acquisition. In addition, the proposed level is only under guidelines which are not legally binding upon the developer. The need to have legislation, particularly emphasis on this is a must and believed to be a good move. Thus, it is needed to study this gap.

Compensation Principles Comparison

In the United Kingdom, the land acquisition process is governed by the Compulsory Purchase Act of 1965. The Act is quite similar to the Malaysian Land Acquisition Act 1960 [Act 486] in the acquisition of land for development. As such, the similar context of those Acts is to gain land from private individual ownership for the purpose of the development whether at the national public level or part thereof.

The Compulsory Purchase Act will be read together with the Land Compensation Act of 1973 of the United Kingdom. The Act did not specifically provide for noise compensation in the wording of the Act. However, Land Tribunal has the power to decide on the compensation which can be granted to the landowner. Moreover, the said claim for noise, vibration, etc. is said to be dealt with under the Land Compensation Act, not the Compulsory Purchase Act (Purdue M, 2006). Thus, the differentiation of the intervention of the Act needs to be scrutinized in the study.

CONCLUSION

Besides the issue of noise compensation, other issues relating to the current development and construction approach also play detrimental elements in the adequacy of the compensation. Amendment to the legal provision of the National Land Code [Act 828], Land Acquisition Act 1960 [Act 486], and Strata Titles Act 1985

[Act 318] provides several consequential impacts on the current approach to development².

The acquisition of underground land, for example, is now very popular for railway's lines such as Mass Rapid Transit (MRT) and East Coast Railways Line (ECRL). The provision for the acquisition of the underground land has been made possible by an amendment in the NLC and Act 486.

However, the compensation for the right acquired for underground land is hard to be measured and award. The construction of an underground tunnel for the railways is very vital in developed and dense areas such as the city of Kuala Lumpur and other major cities. These high-density areas are already occupied by a huge amount of interested parties. Landowners, occupiers, and also financial institutions are fighting for their rights if the lands are needed for development.

These emerging issues and approaches give rise to the definition of rightful enjoyment provided under the NLC³. The enjoyment of the landowner or proprietor of the land is only subjected to a certain depth underground. Thus, the question that the acquisition of the underground land is now subjected to compensation or not needs to be clarified. There is a case at this point, but the case has not been legally decided yet.

As a conclusion, it is detrimental to study the gap on the issue and question why there is no discussion and implementation of the adequacy of compensation in the land acquisition process.

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² A1516, A1517, A1518 of 2016

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