

LAND ACQUISITION AT STRATA AND STRATUM SCHEME IN MALAYSIA

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Abstract: Acquisition of land is the process where the government acquires private land for essential public purpose or for any purposes that the State Authorities thinks that it is beneficial for Malaysia's economic development. For example, acquisition of land for building school, hospital, residential and public infrastructure, such as mass rapid transit (MRT), roads, etc. Land Acquisition Act 1960 (Act 486) is the legislation that enables the government to acquire private land. The landowner whose land is taken is compensated based on market value under this act. Occasionally, private land is acquired by Malaysia Government for a public project that serves as the catalyst for the economic development. Klang Valley in Malaysia has experienced large-scale land acquisitions spearheaded by the mass rapid transit project that started by the year 2011. The massive land acquisition takes place for the realization of the construction works for this MRT project, which expected to be one of the solutions to reduce the traffic congestion. This paper highlights the procedures and implementation of land acquisition on strata and stratum scheme as mentioned in the Land Acquisition (Amendment) Act 2016 and the related guidelines. It tends to understand the land acquisition working principle and role of the Government agencies. The theoretical and technical study is performed to examine land acquisition act for its fairness and equity aspects. Based on this, it will be the key enabler for more sustainable land resources management and yet avoid land-related conflicts.

Keywords: Land acquisition, strata, stratum, compensation

1.0 INTRODUCTION

The change and development of the transportation system is due to the increase in the national industry and population density every year. Thus, the government has taken the initiative by maximizing the use of public transport for workplaces, residences, leisure and other social activities with the construction of a modern railway system. Most of the developed countries in the world have their own modern railway system such as Monorel, Express Rail Link (ERL), Bas Rapid Transit (BRT), Mass Rapid Transit (MRT) and others.

Mass Transit Railways or the MRT is one of the transportation that has the same functionality as Light Rapid Transit (LRT) and Keretapi Tanah Melayu (KTM). The cost of construction of this project cost about of RM 36.6 billion (Department of Information, Malaysia) and expected to be fully completed by 2020. The difference between MRT with another transportation system is MRT are able to carry more passengers and also cover more areas around Klang and Kuala Lumpur. MRT construction aims to facilitate the users so that users does not need to change the transit from one transportation system to the other different transportation system.

In addition, it is also intended to accommodate an increasing number of people who will use the service around Kuala Lumpur, Ampang Jaya, Petaling Jaya, Putrajaya and so on. The increase in the population of this area is expected to increase from 6 million to 10 million by the year 2020 (Department of Statistics Malaysia) and a total of 529,000 passengers will use MRT service per day for Sungai Buluh-Serdang-Putrajaya (SSP) alignment (MRT Corp). This alignment involving Ampang Park station. The construction of this underground MRT does not interfere with other transportation system above the earth's surface and also intended to maximize the land use.

Changes and rapid development should bring success to the government in developing public transport systems. However, this large scale of construction required a very spacious area for the realization of the construction and gives tremendous impact on property rights of each individual landowners. Therefore, it poses problem to the government in resolving land-related matters involving the rights of landowners. When the ownership has been registered either temporary or permanent title, the State Authorities will guarantee the right of ownership and the title is irrefutable (Roslan,1999).

Thus, an act was introduced by the Malaysian Government to allow land acquisition by the State Authorities (PBN). Land Acquisition Act 1960 (APT 1960), is a law introduced for land acquisition and adequate compensation will be paid in return of that acquisition. According to the land Acquisition Act, the State Authority (PBN) can acquire any land for a public purpose, any purpose that in the opinion of PBN beneficial to the economic development of Malaysia, for mining or agricultural, residential, commercial, industrial or recreational purposes or a combination of those purposes.

In 2016, an amendment was made to the Act 486, namely the Act A1517. The scope of the amendments involved 40 sections including a new section, the First Table and also amendments to the forms of the Second Table by the rules of the minister under section 69. The amendments were made to include the underground land acquisition procedures, strata properties and improved occupational or temporary use of land procedures. Besides that, it also clarifies and improves the procedure of referral to court by the landlord as well as improvements to existing provisions. However, there is still no guideline for the implementation of the underground land acquisition.

2.0 STRATA AND STRATUM SCHEME IN MALAYSIA

Sub-sections below explain different strata and stratum scheme in Malaysia.

2.1 Land Acquisition Act 1960 (APT 1960)

Through this act, the Government, private bodies or any corporation are able to acquire land for the public purposes, for the purpose to something that is beneficial to the State Authorities, and also for the purpose of mining, residential, agriculture, trade and so on. This act has been described about the recruitment, application procedures, publication and marking of sites and so on. However, the procedures of land acquisition on strata scheme are not stated in any acts or amendments either Strata Title Act 1985 or Land Acquisition Act 1960.

2.2 Land Acquisition (Amendment) Act 2016 (Act A1517)

Amendments to Land Acquisition Act 1960 were made in line with the amendments made at the Strata Title Act 1985, Amendment of 2016 or known as A1517 in order to clarify and improve the procedures of acquisition of underground land and the acquisition of strata property which is stated in section 57A.1.1. Land Acquisition Procedure Based On Land Acquisition Act 1960 (Act 486)

2.3 Strata Scheme

Strata scheme means a property which divides the building or land to parcels, accessories parcels and common properties with management corporation system for the scheme. For example, flats, condominiums, townhouse, shop houses, offices, small office home office (SOHO), shopping complexes and homes in gated communities and have elements of common property, supervised by a body called the Management Corporation (MC). MC representing the owner of the property and act as the property's guardian. It is also a body that can be claimed and charged in courts. Strata title means a separate title issued to each owner for every unit in a building that particular strata scheme.

2.4 Strata Title Act 1985 (Act 318)

The division of the land and buildings was first introduced in the National Land Code 1965 (NLC 1965) under section 355 to 374. It involves applications for divisions of the buildings, registration and issuance of strata title. This act is being placed under the jurisdiction of the Department of Director General of Land and Mines (JKPTG), under the Ministry of Natural Resources and Environment (NRE). However, the rapid development of strata development in areas with high population density, particularly in big cities such as Kuala Lumpur, Johor Bahru and Penang makes the provisions in the old NLC 1965 no longer relevant to use on the current state. Therefore, there are series of amendments in AHS 1985 made by the Government to improve the weaknesses of the previous act.

2.5 Strata Title (Amendment) Act 2016 (Act A1518)

Strata Title (Amendment) Act 2016 (Act A1518) is an act to amend the Strata Titles Act 1985. According to the former Minister of Natural Resources and Environment, Datuk Seri Dr Wan Junaidi Tuanku Jaafar, this amendment is made together with the amendments to the Land Acquisition Act 1960 (Act 486) which explains the land acquisition involving stratified development schemes as well as underground land. Therefore, if there is a development project that requires only some part of the scheme, so the whole part of the area does not need to be taken anymore. This indirectly will be able to save on development costs and also not giving effect to the residents who are not being involved for the project.

2.6 The Concept Of The Underground Land

The concept of underground land is a new matter introduced in the National Land Code (Amendment) 1990 (Act A752 / 1990) and gazetted on 22 February 1990. A new Division of "FIVE DIVISION (A)" entitled "DISPOSAL OF UNDERGROUND LAND" has been created on the disposal of underground land and related matters. Starting from such amendments the State Authorities are empowered to dispose of underground land for new land disposal cases. Before the amendment, the use of land under the earth's surface by landowners is not subject to any limit in terms of use and depth. Landowners may use their land as affordable as is provided under section 44 (1) (a) of the National Land Code.

Under section 92B KTN, the State Authority is authorized to establish the minimum depth of landowners' right to their land [paragraph 92B (1) (a)] through endorsement of the relevant land title as a condition of exemption. Disposal of underground land is a land under a certain distance below the surface as determined by the State Authority [section 92B / section 92E] or in accordance with the Regulations made by the Minister [section 92]. Underground land after the minimum depth of land from the surface of the earth will continue right as a Government underground land [subsection 92B (4)].

2.7 Depth of Stratum

The depth of a stratum is set by State Authority. This depth will be endorsed in the land ownership document involved as a express condition. However, the depth limit for stratum should not less than the minimum depth prescribed. The minimum depth prescribed in the National Land Code Regulations is shown in the Table 1 below. The stratum to be applied should be deeper than the depth boundary of the surface land as prescribed by the State Authority by taking into account the minimum depth for each category of land use (referred to Figure 1)

Table 1: Minimum Depth of Underground Land Disposal

Type Of Stratum Application	Land Category		
	Agriculture	Building	Industry
Section 92B NLC	6 meter	10 meter	15 meter
Section 92E NLC	6 meter	10 meter	15 meter
	(Figure 1)	(Figure 2)	(Figure 3)

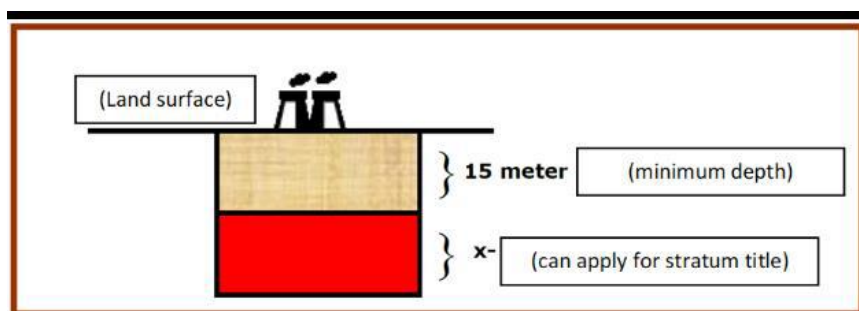
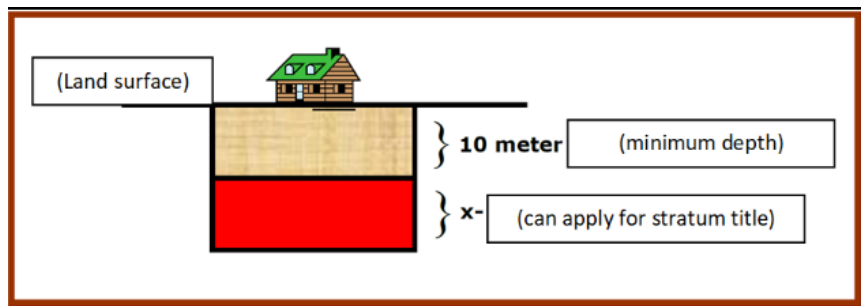
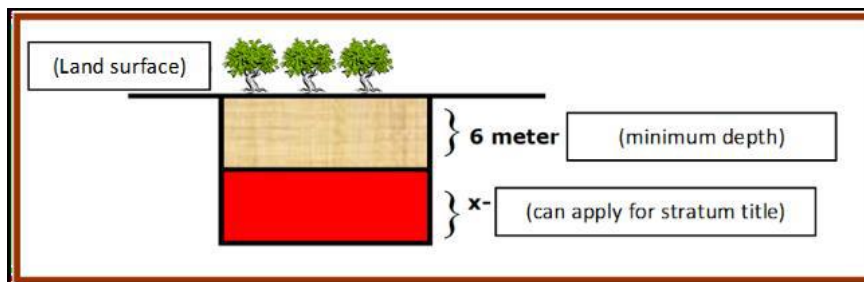


Figure 1 : Depth of underground land disposal in different types of land

However, those prescribed minimum depth only applies to the new ownership. Which means that the surface lands which has been titled without the minimum depth prescribed by State Authority, the application for stratum, lease or free use ownership can be made but only for the owner or lease holder of the surface land.

3.0 METHODOLOGY

In this study, the methodology was divided into 4 phases which are Phase I, Phase II, Phase III and Phase IV. Phase I will discussed the issues, problem statement and literature review about the MRT Project and The Land Acquisition Act. Phase II will be discussed about the method used for data collection at JKPTG Putrajaya and JUPEM Kuala Lumpur which are Technical and Interview methods. Phase III will discussed the analysis from the data collected in Phase II to get the results. Finally, Phase IV will be discussed the recommendations and the conclusion. Figure 2 shows the overall methodology flowchart for this study.

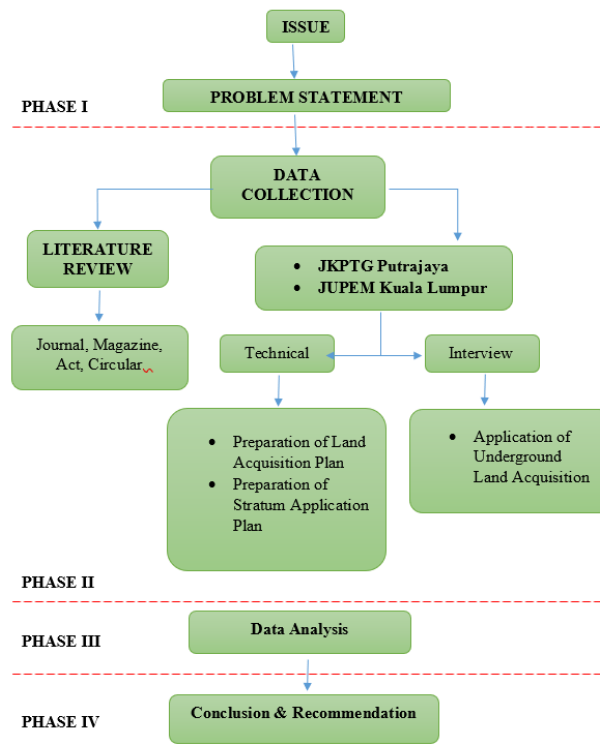


Figure 2 Methodology flowchart

4.0 RESULTS AND DISCUSSION

In this chapter, a discussion will be conducted for the results and analysis of the study in detail about the implementation of land acquisition on strata and stratum scheme based on Land Acquisition (Amendment) Act 2016 (Act A1517). Through the data collection work carried out by the writer will be able to analyze and obtain a decision for a study such as the analysis regarding land acquisition on strata scheme, right and interest of landowners and compensation for strata and stratum scheme whether the implementation already solve the previous problem before the amendment of the Land Acquisition Act.

4.1 Implementation of Land Acquisition On Strata And Stratum Scheme

Land Acquisition (Amendment) Act 2016 (Act 1517) with the approval of the National Land Council have been determine that 1 January 2017 as the effective date of this amendment. Procedures and implementation of the acquisition have been described in the Federal Government Gazette P.U. (A) 372 dated 30 November 2017.

Underground land is the land below the surface land. The underground land acquisition will involve the volume of land calculated based mean sea level depth. In the case of MRT underground railway line from Pasar Seni to Bukit Bintang, the surface depth of the surface land has been determined. This is because there are many buildings that had been completed the depth limit is known. Hence the underground land acquisition used for this case is to set a new depth of land use for the railway tunnel project.

4.1.1 Application on Land Acquisition on Strata and Stratum Scheme

For the case of this MRT Project, the land acquisition is acquisition of a small part of the land. In the first stage, the applicant which is MRT them self or its representative from other agencies will submit an application to the Land Administrator through the Application Letter for the Ministry or User's Department (KJP) using Form 1 Land Acquisition Rules. If the application was approved, the gazetting under section 4 Act 486 for underground land acquisition shall be carried out for the technical study of site suitability and other relevant measurement for the preparation of underground land acquisition plan. In the event of any damage to the land, the Land Administrator will pay the damages.

During the application approval, the Land Administrator will re-measure the land involve with acquisition to determine its boundary limit. For example, for strata scheme, Form E for Ampang Park's acquisition case, posted publically on the Land Office, at the Mukim Public notice board, the Ampang Park LRT station and at places that is close to the Ampang Park Shopping Centre on 28 and 29 October 2015.

The next stage is the valuation of 253 business parcels, 57 accessories parcel and common properties of Ampang Park Shopping Centre. The process was carried out by Jabatan Penilaian dan Perkhidmatan Harta Kementerian Kewangan Malaysia (JPPH) to determine the sufficient amount to be paid as a compensation for the acquisition. A report is made by this department involving the acquisition of strata grants for each parcels. The business space will be photograph and the renovation that has been done on the space are also included in the report.

All factors affecting the shop lot valuation, macro factors such as date of valuation, shopping centre location, building age, holding status and micro factor such as the zoning area, parcel size, renovation are taken into account.

4.1.2 Rights and Interest of Landowners

Land acquisition is not something easy. It involves emotions, sentimental values, commitments and so on. When asked about whether there were a protest from Ampang Park parcel owners, both respondents from Department of Director General of Lands and Mines Putrajaya and Department of Director General of Lands and Mines Federal Territory of Kuala Lumpur strongly agreed that there was protest made by the owners. There were protests, campaigns and appeals made to object Ampang Park's land acquisition.

For stratum scheme, before the amendment was made, the construction of the underground could only be built based on deal agreement and court affair called Collective Agreement Scheme. The landowners can keep their land ownership but the ownership indicate the existence of the MRT railway tunnels to be constructed in the underground via this scheme. However, the method poses many problems as the landowners consider the construction of the underground tunnels can affect their activities on the land surface. This can be seen from the previous study which stated that the tunnel construction had caused the soil sedimentation and vibration on the ground surface (Joanes Jawan, 2016). In another point of view, the MRT also concerned with the activities carried out on the surface which may cause the invasion to the underground tunnel construction areas such as the construction of high-rise building, large industrial plant and others. Both the reason given by both parties highlighting the security issues of the users in the future .

After the amendment, the right and interest of surface and underground landowners may be protected. This can be seen through the limit of land use given in the implementation of underground land acquisition. The compensation rate can be determined by calculating the volume of the surface land after the underground land acquisition approved. The volume can be calculated using the distance and depth information given in the underground land acquisition plan. The compensation was paid to the surface landowner for limiting their land use.

5.0 CONCLUSION

Based on this study, the entire issue regarding to land acquisition on strata scheme including the case study has been discussed in detail and comprehensive. Land acquisition by the government is not something that can be considered as something unnecessary and not beneficial to others. The acquisition usually aims to improve the infrastructure and development of the country. It is something that must be complied with and supported by Malaysian citizens and cooperation between the agencies involved in acquisition are very important to ensure that decisions made are compatible with each other as well as facilitating the acquisition. All discussions by the Director of Land and Mines about the underground land acquisition had been studied to solve the problems faced by the party involved with the underground land acquisition before the amendment in the case of MRT. Amendments to the previous Act are made for the current needs and it is introduced from time to time, based on the current requirements and these amendments serve as the guidelines for the implementation of land laws in

Malaysia. Hence, it is better to conduct a survey on the effectiveness of land acquisition implementation on strata and stratum scheme towards surface landowners based on Land Acquisition (Amendment) Act 2016 and give more exposure regarding these new amendment should be given to the citizen through any kind of medium such as newspaper, television, social media and so on, so that they aware about the new amendments introduced by the government from time to time.

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