

CADASTRE SURVEY PRACTICE (SBEU 3323)

WEEK 1 - INTRODUCTION

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OUTLINE

- Cadastre and Cadastral
- National Land Code
- States Land Rules

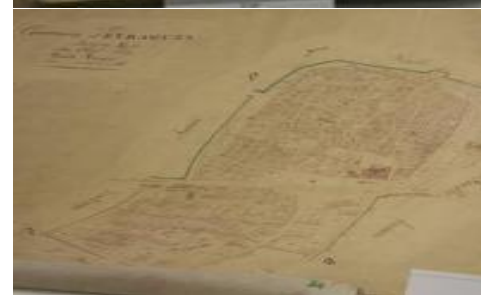
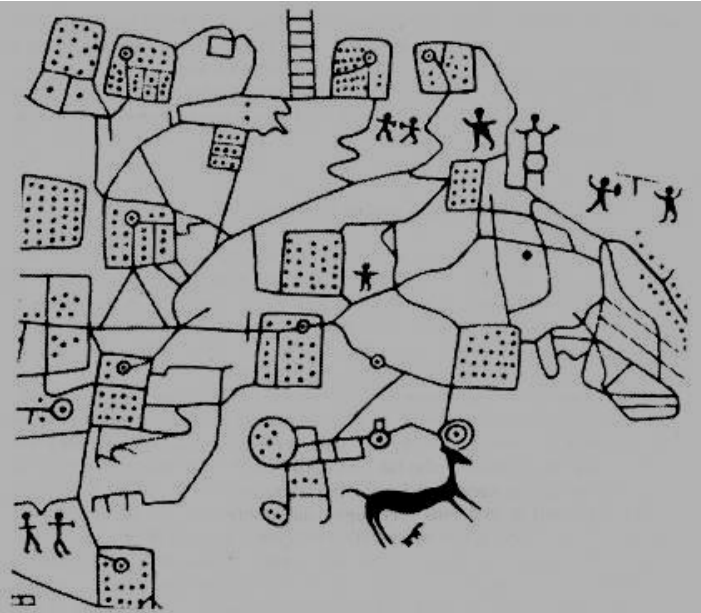
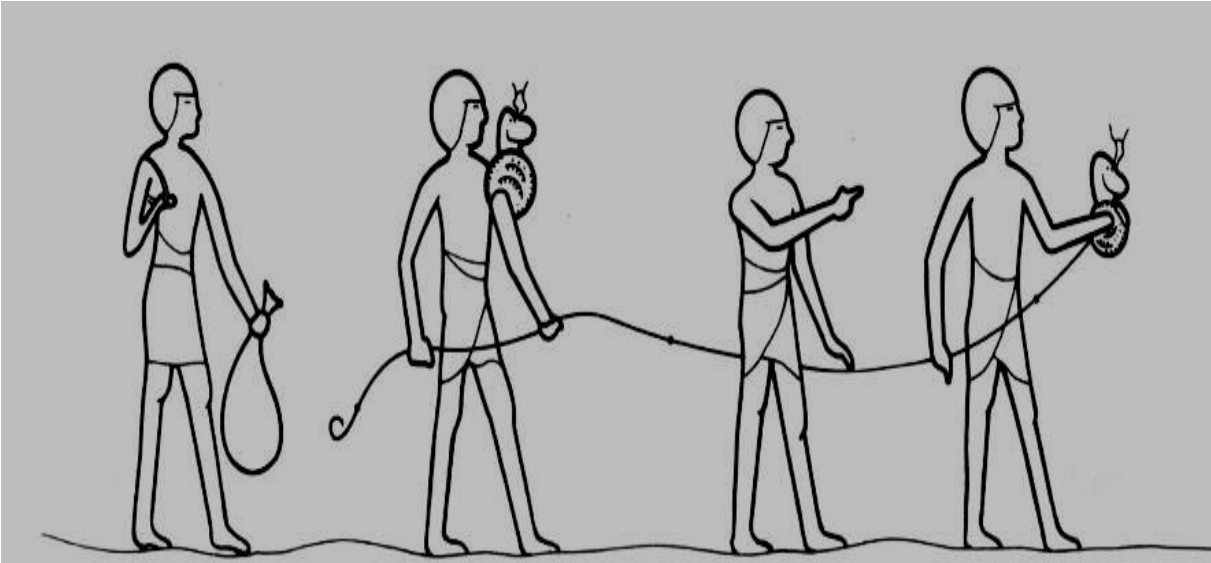
CADASTRE AND CADASTRAL

Objective

To understand the role of the cadastre in the administration of Federal or State or jurisdiction, its operation and components.

History of Cadastres

- Babylonian 4000 BC
- Egyptians 3000 BC
- Italy 1600 BC
- Roman Empire 300 AD
- Domesday Book 1076 AD
- Maria Theresa Cadastre 1792 AD
- Napoleonic Cadastre 1807 AD
- Computerized Cadastre 1980 AD
- Cadastre 2014



The Definition of Cadastre

- ❑ The Cadastre is a land information system, usually managed by one or more government agencies. Traditionally the Cadastre was designed to assist in land taxation, real estate conveyancing, and land redistribution.
- ❑ A cadastre is normally a parcel-based, and an up-to-date land information system containing a record of interests in land (e.g. rights, restrictions, and responsibilities).
- ❑ It usually includes a geometric description of land parcels linked to other records describing the nature of interests the ownership or control of those interests, and often the values of the parcel and its improvements.

The Definition of Cadastre

The International Federation of Surveyors Statement on the Cadastre highlights the importance of the cadastre as a land information system for social and economic development from an international perspective and recognises the central role that surveyors play in the establishment and maintenance of cadastre.

The Definition of Cadastre

□ Effective land management requires land information, for example information about land resource capacity, land tenure and land use. The cadastre is the primary means of providing information about land. The cadastre provides:

- Information identifying those people who have interest in parcels of land;
- Information about those interest, for example nature and duration of right, restriction of interest and responsibility;
- Information about the parcels, for example location, size, improvements and value.

Essential Elements of a Modern Cadastre

- Large scale maps
- Registers
- Cadastre must be complete
- Each parcel must have a unique identifier
- Cadastre must be dynamic
- Information must be correct
- Information must be public
- Cadastre must be supported by a coordinated survey system
- The cadastre must include an unambiguous definition of parcel boundaries both in map form and on the ground.

Cadastre

A successful CADASTRE should provide security of tenure, be simple and clear, be accessible, and provide current and reliable information at minimum cost

Types of Cadastre

Juridical/Legal Cadastre

Fiscal Cadastre

Multipurpose Cadastre

Juridical/Legal Cadastre

- ❑ Supports land rights.
- ❑ Is concerned with documenting rights and relating them to the land with which they are associated. It is concerned with all forms of property rights.
- ❑ As the information system which underpins land registration.
- ❑ A written record or register containing information about each parcel, such as the spatial information and the rights which appertain to the land.
- ❑ Contains a detailed description of the parcel, in the form of either survey maps or measurements.

Fiscal Cadastre

- ❑ An instrument for administering land tax and value policy.
- ❑ The information required to develop and maintain a fiscal cadastre may be collected directly or indirectly through surveys or from other sources, for instance details of land ownership and their property boundaries.

Multipurpose Cadastre

- ❑ Should be maps showing the location and different types of physical features.
- ❑ Concerned with physical attributes such as man-made objects and natural features associated with each land parcel, abstractions, surveying and mapping data can also be referenced to the parcel.

Multipurpose Cadastre

□ Advantages directly beneficial from multipurpose cadastre are:

- (i) an improved conveyancing system;
- (ii) an improved cadastral survey system;
- (iii) improved land use planning, land management and environment management;
- (iv) improved management of publicly owned lands,
- (v) reduction of duplication; and
- (vi) better control of land transactions.

Multipurpose Cadastre

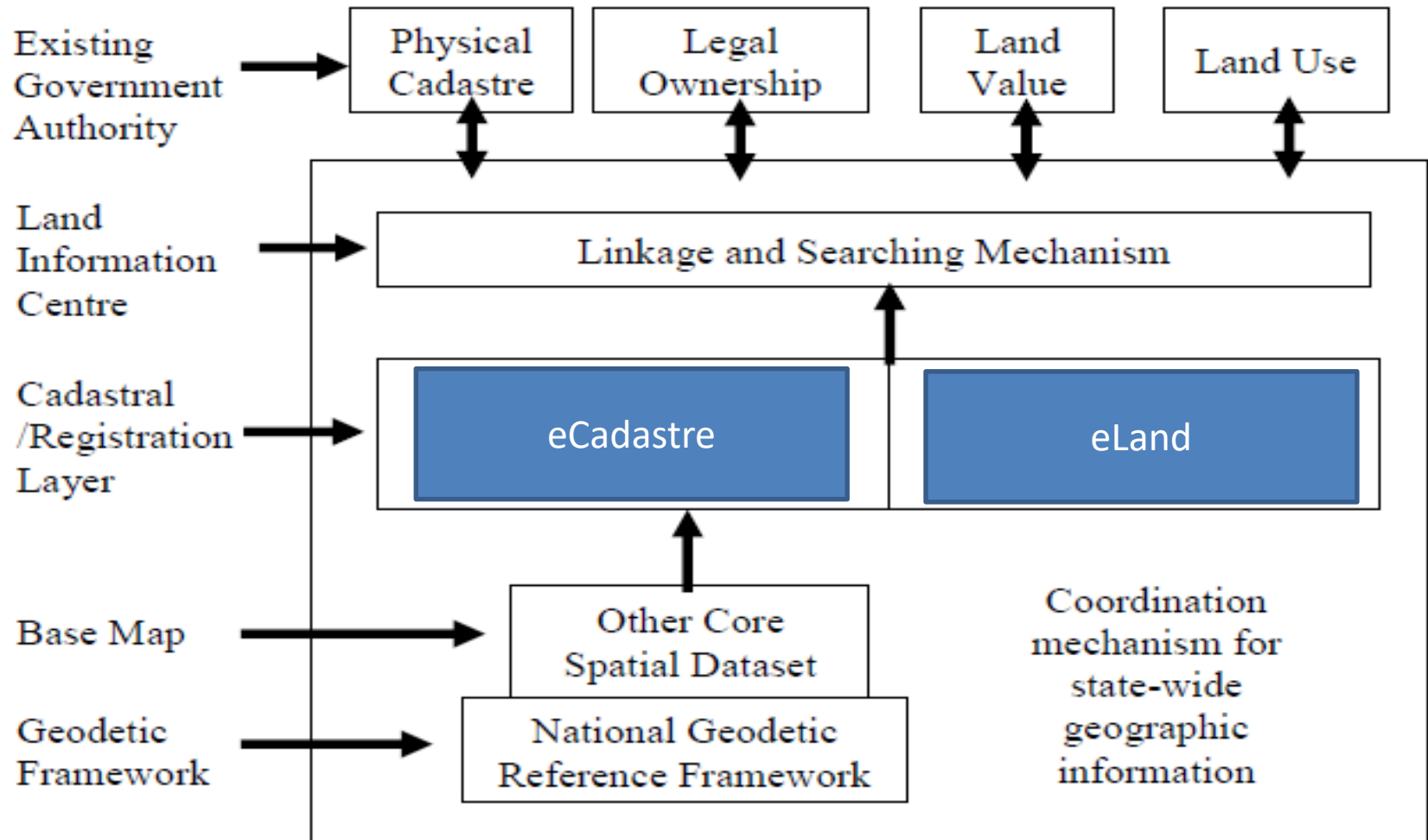
An extension of the basic cadastre, is an essential tool that can include other information from various databases or registers, and can be adapted for local needs. It is a basis for planning for utilities, land information and development management.

Benefits of Multipurpose Cadastre

□ A modern multipurpose cadastre can lead to improve:

- Conveyancing system.
- Cadastral survey system.
- Land use planning and land management.
- Sustainable development.
- Management of publicly owned lands.
- Reduction of duplication.
- Control of land transactions.

Multipurpose Cadastre Components



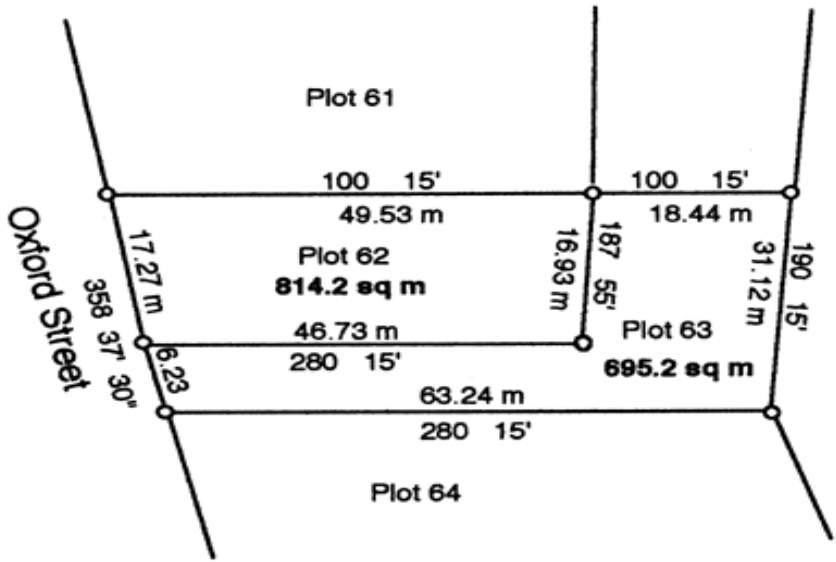
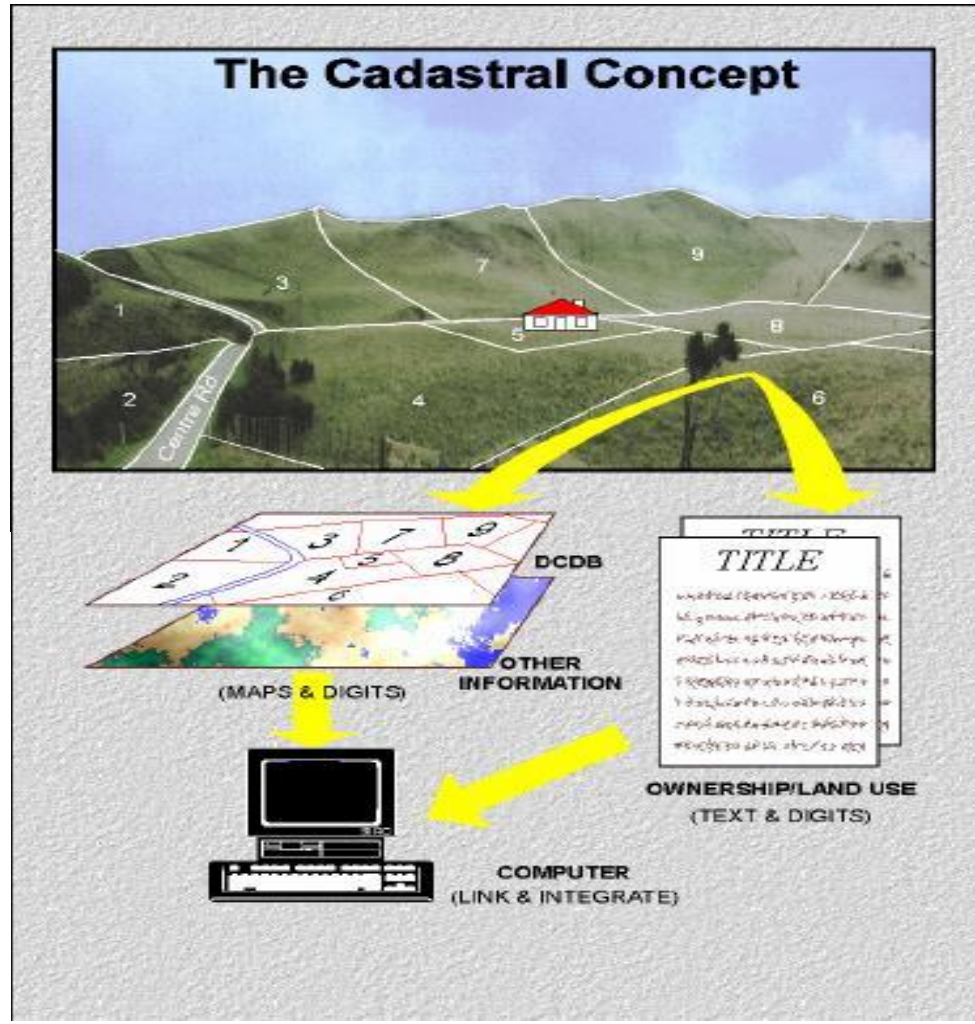
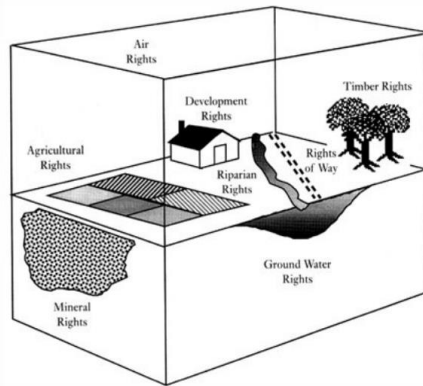
Cadastral

The basic building block in any land administration system is the cadastral parcel. The cadastre consists of two parts:

- Registers
- Maps

The Cadastral Parcel and Ownership Rights

The cadastral parcel and ownership rights



Cadastral Issues

- Documentation of informal or customary rights.
- Land registration (deeds, title or combinations).
- Land titling.
- Parcels and properties.
- Boundaries (fixed, graphical, general).
- Impact of technology.

The Future Cadastre

Cadastre 2014

Cadastre 2034

Cadastre 2.0

Cadastral Fabric

Cadastre 2014

- Statement 1: Show the complete legal situation of the land. Private and public rights and restrictions on the land will be systematically documented;
- Statement 2: The separation between maps and registers will be abolished;
- Statement 3: The cadastral mapping will be dead. Long live modelling;
- Statement 4: Paper and pencil-cadastre will be gone;
- Statement 5: Highly privatised. Public and private sectors will work closely together;
- Statement 6: Cost-recovering.

Cadastre 2034

- ❑ Cadastre 2034 outlines a vision for a broader cadastre where information is readily accessible and people have confidence in the spatial extent of the various rights, restrictions, and responsibilities related to their land and real property.
- ❑ Cadastre 2034 will guide the evolution of jurisdictional systems and ensure a coordinated and consistent approach to future policies, legislation, standards, models and research; and provide clear direction for the sector as a whole.

Cadastre 2034

- ❑ Fundamental to land and property ownership and is sustainably managed;
- ❑ Multipurpose, truly accessible, easily visualised, and readily understood and used;
- ❑ Fully integrated with broader legal and social interests on land;
- ❑ A representation of the real world, which is survey accurate, 3-dimensional and dynamic; and
- ❑ A national cadastre based on common nationwide standards.

Cadastre 2.0

- ❑ Be multipurpose in nature, meeting a wide range of needs beyond simply recording land ownership of defining parcels for taxation;
- ❑ Enable the full spectrum of rights and parcel definitions to be modelled and managed within the system;
- ❑ Be truly three-dimensional, to reflect better the real three-dimensional overlapping rights, and the registration of multi-level properties.

Cadastral Fabric

- A **cadastral fabric** (or parcel fabric) is a continuous surface of connected (map) parcels.
- Parcel polygons are defined by a series of boundary lines that store recorded dimensions as attributes in the lines table. Parcel polygons are also linked to each other by connection lines, for example, connection lines across roads.
- Because each and every parcel is either linked or connected, a seamless network.
- Parcel lines have endpoints, which are the parcel corners. Parcel corner points are common between adjacent parcel boundaries, establishing connectivity and maintaining topological integrity in the network.
- In the geodatabase, topology is the arrangement that defines how point, line, and polygon features share coincident geometry.

Cadastral Fabric

- A cadastral fabric is a representation of the record of survey for an area of land. Parcel boundary line dimensions in the cadastral fabric match the dimensions on the survey record. Dimensions in the cadastral fabric are edited in response to a change in the survey record, for example, a parcel split or resurvey. Parcels that are edited or replaced by new survey records are retained as historic, thus always preserving the original survey record.
- The cadastral fabric acts as a base map for overlying feature classes. Feature classes such as building polygons and utility lines are constructed in relation to parcel boundaries. Standard feature classes using parcel boundaries as a base map will fall out of alignment with an adjusting cadastral fabric.

NATIONAL LAND CODE

National Land Code

- ❑ The National Land Code 1965 (Act 56) was formulated based on existing practices in the 1950s until the pre-1965 era before it came into effect on 1st January 1966.
- ❑ Before this, all land dealings were governed by the Federated Malay States (Cap 138) Land Code 1926 that came into effect on 1st January 1928.
- ❑ Also being enforced at the time were five separate State legislations in each of the five Unfederated Malay States as well as the English Deeds System in the former Straits Settlements of Malacca and Penang.

List of Amendments

Item	Amending Law	Short Title	In Force from
1	P.U. 91/1967	National Land Code (Malacca) Order 1967	01-01-1967
2	P.U. 184/1968	National Land Code (Amendment of First and Tenth Schedules) Order 1968	03-05-1968
3	P.U. 500/1968	National Land Code (Penang and Malacca) Order 1968	01-01-1966
4	Act A26	National Land Code (Amendment) Act 1969	01-05-1969
5	P.U.(A) 414/1969	Essential (National Land Code) Regulations 1969	22-10-1969
6	P.U.(A) 532/1969	Essential (National Land Code) (No.2) Regulations 1969	31-12-1969
7	P.U.(A) 36/1969	Essential (National Land Code) (No.2) Regulations 1969 - Corrigendum	31-12-1969
8	P.U.(A) 73/1971	Emergency (Essential Powers) Ordinance No.88 1971	21-10-1969 (1 st Schedule) 30-12-1969 (2 nd Schedule)

List of Amendments

Item	Amending Law	Short Title	In Force from
9	Act A124	National Land Code (Amendment) Act 1972	21-10-1969 (1 st Schedule) 30-12-1969 (2 nd Schedule)
10	P.U.(A) 231/1973	National Land Code (Amendment of Fifth Schedule) Order 1973	31-08-1973
11	P.U.(A) 56/1974	Federal Territory (Modification of National Land Code) Order 1974	01-02-1974
12	Act A264	National Land Code (Amendment) Act 1974	16-08-1974
13	P.U.(A) 183/1975	Federal Territory (Modification of National Land Code) Order 1975	01-02-1974
14	Act A322	National Land Code (Amendment) Act 1975	01-01-1977
15	P.U.(A) 267/1975	National Land Code (Amendment of First Schedule) Order 1975	15-12-1975
16	Act 160	Malaysian Currency (Ringgit) Act 1975	29-08-1975

List of Amendments

Item	Amending Law	Short Title	In Force from
17	P.U.(A) 222/1976	National Land Code (Amendment of Fifth Schedule) Order 1976	15-02-1972
18	Act A386	National Land Code (Amendment) Act 1977	18-03-1977
19	P.U.(A) 126/1978	National Land Code (Amendment of Fifth Schedule) Order 1978	28-04-1978
20	Act A444	National Land Code (Amendment) Act 1979	16-02-1979
21	Act A518	National Land Code (Amendment) Act 1981	29-05-1981
22	Act A542	National Land Code (Amendment) Act 1982	14-02-1982
23	P.U.(A) 59/1982	National Land Code (Amendment of Fifth Schedule) Order 1982	05-03-1982
24	P.U.(A) 534/1983	Federal Territory (Modification of National Land Code) (Amendment) Order 1983	29-04-1982 Subpara 2(a) 01-02-1974 Subpara 2(b)

List of Amendments

Item	Amending Law	Short Title	In Force from
25	P.U.(A) 535/1983	Federal Territory (Modification of National Land Code) (Amendment) (No.2) Order 1983	01-02-1974
26	Act A587	National Land Code (Amendment) Act 1984	25-03-1985
27	Act A615	National Land Code (Amendment) Act 1985	01-06-1985
28	Act 318	Strata Titles Act 1985	01-06-1985
29	Act A624	National Land Code (Amendment) (No.2) Act 1985	13-09-1985 Peninsular 25-03-1985 KL
30	Act A658	National Land Code (Amendment) Act 1986	01-01-1987
31	Act A752	National Land Code (Amendment) Act 1990	23-02-1990
32	Act 832	National Land Code (Amendment) Act 1992	01-01-1993
33	P.U.(A) 92/1995	National Land Code (Amendment of the Fourteenth Schedule) Order 1985	01-04-1995
34	Act A941	National Land Code (Amendment) Act 1996	16-02-1996 ⁸⁵

List of Amendments

Item	Amending Law	Short Title	In Force from
35	P.U.(A) 204/1997	National Land Code (Modification) Order 1997	09-05-1997
36	P.U.(A) 318/1997	National Land Code (Amendment of Fifth Schedule) Order 1997	22-08-1997
37	Act A1034	National Land Code (Amendment) Act 1998	11-09-1998
38	P.U.(A) 437/2000	National Land Code (Amendment of the Fifteenth Schedule) Order 2000	11-09-1998
39	P.U.(A) 213/2001	Federal Territory of Putrajaya (Modification of National Land Code) Order 2001	01-02-2001
40	Act A1104	National Land Code (Amendment) Act 2001	01-12-2001 Except s7 & s41 01-03-1998 S7 & s41
41	P.U.(A) 164/2002	Federal Territory of Putrajaya (Modification of National Land Code) Order 2001 - Corrigendum	01-12-2001 Except s7 & s41 01-03-1998 S7 & s41

List of Amendments

Item	Amending Law	Short Title	In Force from
42	P.U.(A) 180/2002	Federal Territory of Putrajaya (Modification of National Land Code) (Amendment) Order 2002	24-08-2001 Except para 2(h) 01-02-2001 Para 2(h)
43	P.U.(A) 505/2002	Federal Territory (Modification of National Land Code) (Amendment) Order 2002	27-12-2002
44	P.U.(A) 278/2003	Federal Territory of Putrajaya (Modification of National Land Code) (Amendment) Order 2002 - Corrigendum	27-12-2002
45	Act 625	National Land Code (Validation) Act 2003	30-05-2003
46	P.U.(A) 220/2004	Federal Territory (Modification of National Land Code) (Amendment) Order 2004	02-07-2004
47	Act A1333	National Land Code (Amendment) Act 2008	01-01-2009 Except s10 & s21 25-03-1985 (s10) 01-12-2001 (s21)

List of Amendments

Item	Amending Law	Short Title	In Force from
48	P.U.(A) 454/2009	Federal Territory of Labuan (Extension and Modification of National Land Code) Order 2009	01-01-2010
49	P.U.(A) 226/2013	Federal Territory of Putrajaya (Modification of National Land Code) (Amendment) Order 2013	15-07-2013
50	P.U.(A) 227/2013	Federal Territory of Labuan (Extension and Modification of National Land Code)(Amendment) Order 2013	15-07-2013
51	P.U.(A) 228/2013	Federal Territory (Modification of National Land Code) (Amendment) Order 2013	15-07-2013
52	P.U.(A) 220/2014	National Land Code (Modification) Order 2014	11-08-2014
53	P.U.(A) 221/2014	National Land Code (Modification) (Amendment) Order 2014	11-08-2014

List of Amendments

Item	Amending Law	Short Title	In Force from
54	Act A1516	National Land Code (Amendment) 2016	01-01-2017 Except s34, 35, 45, 48, 49, 56 & 76 21-07-2017 S34 & s76 30-08-2017 S35, 45, 48, 49 & 56
55	P.U.(A) 375/2016	National Land Code (Amendment of First and Tenth Schedules) Order 2016	01-01-2017
56	P.U.(A) 172/2017	National Land Code (Amendment of Sixteenth Schedule) Order 2017	16-06-2017 Except subpara 2(c)(vii) & 2(f) 01-01-2009 Subpara 2(c)(vii) & 2(f)
57	P.U.(A) 201/2017	National Land Code (Amendment of First Schedule) Order 2017	21-07-2017
58	P.U.(A) 247/2017	National Land Code (Amendment of First and Fifth Schedules) Order 2017	30-08-2017

List of Amendments

Item	Amending Law	Short Title	In Force from
59	P.U.(A) 379/2017	National Land Code (Modification) 1997 (Amendment) Order 2017	08-12-2017
60	P.U.(A) 380/2017	National Land Code (Modification) 2014 (Amendment) Order 2017	08-12-2017
61	P.U.(A) 303/2020	Federal Territory of Putrajaya (Modification of National Land Code) Order 2001	
62	P.U.(A) 304/2020	Federal Territory of Labuan (Extension and Modification of National Land Code) Order 2009 - Corrigendum	

List of Laws (Superseded)

National Land Code, Act of Parliament No.56 of 1965

REPLACE By

National Land Code (Act 828), Regulations & Selected Orders

- Revised up to 14th October 2020
- Date of Publication in the Gazette 15th October 2020

LAWS OF MALAYSIA

Act 828

NATIONAL LAND CODE

ARRANGEMENT OF SECTIONS

DIVISION I—INTRODUCTORY

PART ONE—PRELIMINARY

Section

1. Short title
2. Application
3. Commencement
4. Savings
5. Interpretation

PART ONE (A)—COMPUTERIZED LAND REGISTRATION SYSTEM

- 5A. Coming into operation of the Computerized Land Registration System in any land Registry
- 5B. Amendment of the Fourteenth Schedule

PART ONE (B)—MODIFICATIONS TO FACILITATE THE IMPLEMENTATION OF THE PENGURUSAN DANAHARTA NASIONAL BERHAD ACT 1998

- 5C. Modifications to facilitate the implementation of Pengurusan Danaharta Nasional Berhad Act 1998

**PART ONE (C) — MODIFICATIONS TO FACILITATE THE
IMPLEMENTATION OF THE ELECTRONIC LAND
ADMINISTRATION SYSTEM**

Section

- 5D. **Coming into operation of the Electronic Land Administration System in any land Registry**

Part Two — ADMINISTRATION

Chapter 1 — Powers of the Federation and of Federal Officers

6. **Director General of Lands and Mines (Federal) and other Federal Officers**
7. **Delegation of Minister's powers to Director General**
8. **General powers of Director General**
9. **National Land Council: initiation of action with respect to certain matters**
10. **Regulation of procedure, etc., of Survey and Mapping Department**

Chapter 2 — Powers of the States and of State Officers

11. **Administrative areas**
12. **State Director and other State Officers**
13. **Delegation of powers of State Authority to State Director, etc.**
14. **Power of State Authority to make rules**
15. **General powers of State Director, etc.**
16. **Actions by and against the State Authority**
17. **Power to require removal, etc., of trees**
18. **Power to consolidate notices, orders and notifications**

Chapter 3 — General provisions relating to officers, etc.

19. **Information to be kept secret**
20. **Purchase of land by officers, etc.**
21. **Officers to be public servants**
22. **Protection of officers**

Section

23. Interpretation
24. Conduct of enquiry
25. Time and place of enquiry
26. Enquiry to be open to public
27. Notice of enquiry
28. Cancellation and postponement of enquiries, and change of venue
29. Hearing of enquiry
30. Veracity of evidence
31. Substance of evidence and reasons for decision to be recorded
32. Inspection of record of evidence, etc.
33. No alteration, etc., of decision or order
34. Re-opening of enquiry
35. Death etc., of Land Administrator
36. Former applications
37. Appeal
38. Costs of enquiry
39. Application of Penal Code

**PART THREE—RIGHTS AND POWERS OF THE
STATE AUTHORITY**

Chapter 1—Property in land and powers of disposal

40. Property in State land, minerals and rock material
41. Powers of disposal of State Authority, and rights in reversion, etc.
42. Powers of disposal
43. Persons and bodies to whom land may be disposed of
44. Extent of disposal: general
45. Extent of disposal: minerals, rock material and forest produce
46. Reversion, etc., to the State Authority
- 46A. Reversion to State Authority of an undivided share in land or parcel of subdivided building
47. Buildings to vest in State Authority on reversion, etc.

Section

- 48. No adverse possession against the State
- 49. Effect of advance or retreat of sea, etc.
- 50. Power of State Authority to vary provisions, extend time, etc.

Chapter 2—Classification and use of land

CLASSIFICATION

- 51. Classification of land

USE OF LANDS ALIENATED UNDER THIS ACT

- 52. Categories of land use and application thereof to lands alienated under this Act

USE OF LANDS ALIENATED BEFORE COMMENCEMENT

- 53. Conditions affecting use of lands alienated before commencement until category of land use imposed
- 54. Application of categories of land use to lands alienated before commencement

USE OF LANDS APPROVED FOR ALIENATION BEFORE COMMENCEMENT

- 55. Application of section 53 to lands approved before commencement
- 56. Application of section 54 to lands approved before commencement

Chapter 3—Rights of access to, and use of, alienated lands

- 57. General
- 58. Nature and extent of rights
- 59. Notice of intended works
- 60. Objection to intended works
- 61. Compensation
- 61A. Private person carrying out works

PART FOUR: DISPOSAL OTHERWISE THAN BY ALIENATION

Chapter 1—Reservation of land

Section

- 62. Power of reservation of State land
- 63. Power to lease reserved land
- 64. Revocation of reservation

Chapter 2—Temporary occupation of land

- 65. Power to licence temporary occupation of State land, mining land and reserved land
- 66. Issue of temporary occupation licences
- 67. Duration, conditions, etc., and form of temporary occupation licences
- 68. Temporary occupation licences not capable of transfer or transmission on death
- 68A. Deposits in respect of temporary occupation licence
- 69. Combined temporary occupation licence and permit under Chapter 3

Chapter 3—Removal of rock material

- 70. Power to permit extraction, removal and transportation of rock material
- 71. Issue of permits
- 72. Duration, conditions, etc., and form of permits
- 73. Permits not capable of transfer or transmission on death
- 74. Deposits in respect of permits
- 75. Effect of permits on conditions affecting land

Chapter 4—Permit to use air space above state land and reserved land

- 75A. Power to permit use of air space above State land or reserved land
- 75B. Applications for permits
- 75C. Issue of permits on approval
- 75D. Conditions, etc., of permits

- Section
- 75E. Permits not capable of assignment except with consent of State Authority
 - 75F. Deposit or security in respect of permits
 - 75G. Power to cancel permits

PART FIVE—DISPOSAL BY ALIENATION

Chapter 1—Introductory

- 76. Meaning of alienation
- 77. Titles under which land may be alienated
- 77A. *(Deleted)*
- 78. How alienation is effected

Chapter 2—Approval of land for alienation

- 79. General provisions relating to approvals
- 80. Supplementary provisions relating to approvals
- 81. Items of land revenue payable on approval
- 82. Power to require payment of deposit

Chapter 3—Alienation under final title

- 83. Survey for purposes of alienation under final title
- 84. Recomputation of items of land revenue after survey
- 85. Register and issue documents of title
- 86. Form of documents for Registry title
- 87. Form of documents for Land Office title
- 88. Registration of register documents of title
- 89. Conclusiveness of register documents of title
- 90. Issue of issue documents of title
- 90A. Extension of land alienated for a term of years
- 91. Exemption of documents of title from stamp duty
- 92. Indefeasibility of final title, and rights of dealing etc.

PART FIVE (A): DISPOSAL OF UNDERGROUND LAND

Section

- 92A. Interpretation
- 92B. Specification of rights in respect of underground land upon alienation
- 92C. Alienation of underground State land
- 92D. Application for independent use or alienation of underground land below alienated land
- 92E. Specification of rights in respect of underground land upon the grant of a lease of reserved land
- 92F. Lease of underground land below reserved land
- 92G. Application for independent use of underground land below leased reserved land
- 92H. Relationship of this Part to other provisions of this Act
- 92I. Regulations by the Minister

DIVISION III—ALIENATED LANDS: INCIDENTS AND REGISTRATION OF TITLE

PART SIX—RENT

Chapter 1—General

- 93. Rent to be a debt due to State Authority
- 94. When rent due, and when in arrear
- 95. Where rent payable
- 96. Computation of rents
- 96A. Rent of land with subdivided building

Chapter 2—Collection of arrears of rent

- 97. Notice of demand
- 98. Right of chargees, lessees, etc., to pay sum demanded
- 99. Effect of payment of sum demanded
- 100. Forfeiture for non-payment of sum demanded

Section

- 101. Power of State Authority to revise rents periodically
- 102. Power in respect of lands alienated before commencement

PART SEVEN—CONDITIONS AND RESTRICTIONS IN INTEREST

Chapter 1—General

- 103. Interpretation and scope
- 104. Conditions and restrictions in interest to run with the land
- 105. Duration of conditions and restrictions in interest
- 106. Time to be of the essence of fixed-term conditions of a positive character
- 107. Extension of time for compliance with fixed-term conditions of a positive character
- 108. Conflict with local by-laws, etc.

*Chapter 2—Summary of conditions and restrictions
in interest affecting alienated lands*

LANDS ALIENATED UNDER THIS ACT

- 109. Conditions, etc., applicable on alienation

LANDS ALIENATED BEFORE COMMENCEMENT

- 110. Conditions, etc., applicable as from commencement
- 111. Conditions, etc., applicable after category of land use imposed under section 54

LANDS APPROVED FOR ALIENATION BEFORE COMMENCEMENT

- 112. Conditions, etc., applicable on alienation, and after imposition of category of land use by virtue of section 56

CHANGES IN CONDITIONS AND RESTRICTIONS

- 113. Manner in which changes may be effected

BOUNDARY MARKS

Section

114. Implied conditions affecting all alienated land

CATEGORY: AGRICULTURE

115. Implied conditions affecting land subject to the category “agriculture”

CATEGORY: BUILDING

116. Implied conditions affecting land subject to the category “building”

116A. *(Deleted)*

CATEGORY: INDUSTRY

117. Implied conditions affecting land subject to the category “industry”

AGRICULTURAL LAND ALIENATED UNDER QUALIFIED TITLE

118. Implied condition affecting agricultural land alienated under qualified title

LAND ENDORSED “PADI” BEFORE COMMENCEMENT

119. Implied condition affecting land alienated before commencement for padi cultivation

Chapter 4—Express conditions and restrictions in interest

GENERAL POWERS UPON ALIENATION

120. Imposition of express conditions and restrictions in interest on alienation under this Act

LAND ALIENATED SUBJECT TO A CATEGORY

121. Category: Agriculture

122. Categories: Commercial, Residential and Industry

LAND BECOMING SUBJECT TO A CATEGORY AFTER ALIENATION

Section

123. Imposition of express conditions on land becoming subject to a category under section 54

VARIATION OF CONDITIONS, RESTRICTIONS AND CATEGORIES

124. Power of State Authority to vary conditions, etc., on application of proprietor
- 124A. Simultaneous applications for subdivision and under subsection 124(1) in respect of the proposed subdivisional portions

Chapter 5—Enforcement of conditions

125. When a breach of condition arises
126. Breach of complex condition
127. Liability to forfeiture for breach of condition
128. Summary action to secure remedying of breach of condition
129. Action to enforce forfeiture for breach of condition

PART EIGHT—FORFEITURE

130. Forfeiture to take effect upon notification in the *Gazette*
131. Effects of forfeiture
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Rationale And Scope Of The National Land Code

❑ The National Land Code (NLC) was enacted under Article (74) of the Federal Constitution on 18th September 1965. It came into force on 1st January 1966 (vide L.N. 474/1965) in all States of Peninsular Malaysia. The purpose of the NLC is to establish a uniform system of land tenure and dealings throughout the eleven States of Peninsular Malaysia.

❑ Before 1st January 1966, these eleven States had two different systems of land tenure. The States of Penang and Malacca had a system peculiar to the pre-war Straits Settlement (modelled on the English laws of property and conveyancing) whereby privately-executed deeds were the basis of title to land.

Rationale And Scope Of The National Land Code

- ❑ The other nine States of Peninsular Malaysia, by contrast, employed a system based on the principle that private rights in land could derive only from express grant by the State or secondarily from State registration of subsequent statutory dealings.
- ❑ The NLC was drafted based on the Land Code (FMS Cap 138) - the law applicable to Negeri Sembilan, Pahang, Perak and Selangor before 1st January 1966.

Rationale And Scope Of The National Land Code

- ❑ To abolish the system in Penang and Malacca and to replace it with that of other States of Peninsular Malaysia, the National Land Code (Penang and Malacca Titles) Act was enacted in 1963 and brought into force on 1st January 1966 (vide L.N. 475/1965).
- ❑ Thus with the NLC and the National Land Code (Penang and Malacca) Act 1963 (now Act 518), all the eleven States in Peninsular Malaysia have a uniform system of land tenure and dealings from 1st January 1966.

Features In Land Matters

The Torrens system established and certified that under the power of the government, indefeasibility of land title and facilitate , expediting and lowering the expenses of all land dealing. The purpose of the Torrens System is to provide assurance and convenience to all land dealing. The title is the proof that the person mentioned in the title is the owner of the property.

Features In Land Matters

Land titles require a proper description of the boundaries. This means that efficient land survey must be carried out. A title may be issuance with any reasonable boundary, but if the boundaries are inaccurate when the title is still indefeasibility. It may be prone to disputes over boundaries. With the final survey, the possibility of any boundary dispute is overwhelming and thus the title actually becomes infeasibility in all respects.

Features In Land Matters

From those mentioned above, it can be concluded that main features of Torrens System are as below:

- Document of title that clearly determines the land is filed at the Land Office or the Registrar Office.
- In the title, it is registered of all sale and purchase of the land.

Features In Land Matters

❑ Able to examine at any time at the Land Office or the Registry Office the details of the original title conditions also the names of the current proprietors and all others who have an interest in such land as a lease or charge.

❑ It should be noted that the Torrens System originally from South Australia. The system is named after the name of Sir Robert Torrens who introduced it to South Australia in 1858. Then it expanded throughout Australia and other parts of the world.

Features In Land Matters

Among the advantages of the Torrens System are as follows:

- Person who owns the land will hold a title document, secured by the government, shows all the conditions and other interests relating the land.
- Can finance the land by with a simple registration without requiring complicated and expensive searches through previous documents.
- The title to the land and the rights of all persons holding leases or charges will be indefeasible.

Land System In Penang And Malacca Before 1st January 1966

❑ The basis of land title is alienation by the Government. But the title document has never been used as registration of dealing and the information available from it is only the original proprietor's name. Dealing in land is very complicated.

❑ For example, in sale of land, the buyer receives from the seller a transfer of deeds which is a single record that the sale has been made and the sole evidence that the buyer is the proprietor.

Land System In Penang And Malacca Before 1st January 1966

For the next dealing, the same process is repeated so that after some dealing, there will be a whole network of transfer (or deed of title) with which the owners have received ownership from the proprietor just before them.

Land System In Penang And Malacca Before 1st January 1966

To ensure that the proprietor of the land at the time has a legitimate title, every connection in dealing must be examined. An earlier inspection of a seller to another seller (which, according to the law must be brought back 30 years or more) requires a qualified lawyer service to do transfer but only after verification has been made there is satisfactory evidence that any of its proprietors have a legitimate title .

Land System In Penang And Malacca Before 1st January 1966

To summary, Penang and Malacca before 1st January, 1966, all dealing between the current proprietor and the original proprietor have been completely closed and the proof of title is located, not in a document issued by the government and not in the official register of documents but lies solely on the evidence from a series of private documents.

Land System In Penang And Malacca Before 1st January 1966

It should be noted that the system described above is also known as the Deeds Registration System. It is so known that under the provisions of the Ordinances applicable to Penang and Malacca that time, no deeds involving land shall be admissible as lawful by a public officer or court unless the deed is registered at the Register of Deed on the Pinang and Melaka.

Factors That Affect The Success Of Current Land System

The success of the current land system depends largely on the speed of registering land titles. This will depend on the efficiency of the Survey Department and the Land Office. If the land survey is not done accurately and immediately and if the Land Office takes a long time to register the titles, this system will not succeed.

Factors That Affect The Success Of Current Land System

With regard to land matters, to ensure the success of this system, there should be no mistake and delay in the registration. All of this shows the need for strict supervision by senior officials in the Land Office over their subordinates. It is impossible for them to do so without the necessary knowledge and skills, sufficient time and proper encouragement.

Land Laws Before National Land Code 1965

❑ Before the existence of the National Land Code 1965, All States in Peninsular Malaysia used their respective State land laws.

- ✓ Pahang, Negeri Sembilan, Selangor dan Perak – Land Code (Cap 138)
- ✓ Penang and Malacca – Land Ordinance (Cap 113)
- ✓ Johor – Land Enactment (No.1)
- ✓ Kedah – Land Enactment (No.56)
- ✓ Kelantan – Land Enactment 1938
- ✓ Perlis – Land Enactment 1356
- ✓ Terengganu – Land Enactment 1357

Power To Make Laws

Under Article 74 of the Federal Constitution, jurisdictions of the Federal Government and the State Government have been clearly defined, which is in accordance with the matters listed in the Ninth Schedule.

Power To Make Laws

Federal Government

- ✓ Foreign Affairs
- ✓ Defense
- ✓ Education
- ✓ Transportation
- ✓ Health

State Government

- ✓ Islamic Religious Affairs
- ✓ Forestry
- ✓ Land
- ✓ Agriculture

Power To Make Laws

The power to make laws shall be in accordance with their respective jurisdiction, i.e. for matters under the jurisdiction of the Federal Government, only Parliament may make laws on it and for matters under the jurisdiction of the State Government, only the Legislature of the State (State Legislative Assembly) may make laws about it (except under certain circumstances).

Power To Make Laws

Land is a matter under the jurisdiction of the State Government. So the land law should be made by the State Legislature. However, the National Land Code is a land law made by Parliament, which is the Act of Parliament No. 56 of 1965. This can be done by Parliament under the power conferred by Article 76 (4), where it is stated that for the purpose of solving the equality of law and policy, Parliament may make laws on certain matters relating to land.

Limitation On The National Land Code 1965

❑ Although the National Land Code is the main land law, but it cannot overrule several land laws, such as:

- i) Terengganu Settlement Enactment 1356;
- ii) Padi Cultivators (Control Of Rent And Security Of Tenure) Act 1967;
- iii) Kelantan Land Settlement Ordinance 1955,
- iv) Land (Group Settlement Areas) Area 1960; and
- v) Any laws that regarding exemption from payment of land revenue.

Power Limitation By National Land Code 1965

❑ In addition, the provisions of the National Land Code 1965 shall not apply if it contravenes the provisions of any law on:

- i) Customary Land;
- ii) Malay Reservation Land / Malay Holding;
- iii) Mining Land;
- iv) Sultanate Land; and
- v) Wakaf Land or Baitulmal Land

Subsidiary Legislation Under National Land Code 1965

The National Land Code 1965 authorizes several parties, Yang di-Pertua Agong, the Minister and the State Authority to make subsidiary legislation such as orders and rules. For its application in Penang and Malacca, the National Land Code 1965 has been modified as contained in the National Land Code (Penang and Malacca) Act 1965, the National Land Code (Malacca) Order 1967 and the National Land Code (Penang and Malacca) Order 1968.

Subsidiary Legislation Under National Land Code 1965

These orders were made by the Yang di-Pertuan Agong pursuant to Section 439 of the National Land Code 1965. An example of a subsidiary legislation under the National Land Code 1965 made by the Minister is the National Land Code (Survey Fees) Order 1965. The State Authority for each State in Peninsular Malaysia has established Land Rules applicable to each State.

Application Of The NLC 1965 To The Federal Territory Of Kuala Lumpur

- ❑ For its application to the Federal Territory of Kuala Lumpur, the NLC has been modified by the Federal Territory (Modification of the National Land Code) Order 1974 (P.U.(A) 56/1974). This order was made under section 5(3) of the Federal Constitution (Amendment) Act 1973 (Act A206).
- ❑ Under the Order, the powers of the State Authority in the NLC are either given to the Federal Government or the Minister in charge of land in the Federal Territory of Kuala Lumpur.

Application Of The NLC 1965 To The Federal Territory Of Kuala Lumpur

❑ By virtue of the above Order, the post of the Director of Lands and Mines is replaced by the Land Executive Committee. This Committee has the powers of the Director of Lands and Mines. In addition, the Committee also gets derives through delegation by the Federal Government under section 13 of the NLC (vide P.U.(B) 597/1974). However, the posts of Registrar of Titles and Land Administrators exist. These two posts are held by the same person.

❑ Any action or matter undertaken by this Committee which is not covered in this gazette has been verified by the National Land Code (Validation) Act 2003 (Act 625). The new Representative of Power has been gazetted through P.U.(B) 108/2003. However, the title of Title and Land Administration Registration still exists and is held by the same person. However, the posts of Registrar of Titles and Land Administrators exist. These two posts are held by the same person.

Power Of Land Administration

As mentioned in the Federal Constitution, all matters relating to the administration of land in a State are under the jurisdiction of the State Government. In the National Land Code (Act 828), this power is referred as the State Authority (PBN), which is defined as the Raja/Sultan or the State Governor

Administrative Areas

- Under section 11 National Land Code (Act 828), the State Authority may by notification in the Gazette:
 - i) divide the territory of the State into districts;
 - ii) divide any district into sub-districts;
 - iii) divide any district or sub-district into mukims;
 - iv) vary or alter the boundary of any district, sub-district, mukim, town or village;
 - v) after the survey or definition thereof by or on behalf of the Director of Survey and Mapping, declare any area of the State to be a town or village.

Administrative Areas

- ❑ The marine boundary of a State under section 5 of the National Land Code (Act 828), which refer to sub section 2 to section 4 of Emergency (Essential Powers) Ordinance, No.7/1969, P.U.(A) 307A/69.
- ❑ This border is defined as an area having maritime boundary with shore line and not more than 12 nautical miles from the low tide (territorial waters). The State's territories boundary is 3 nautical miles.

Appointment Of Officer

In addition to the powers conferred upon the State Authority, the National Land Code (Act 828) also provides for certain powers to officers such as State Director of Lands and Mines, Registrars of Titles, Land Administrators and others.

Appointment Of Officer

In order to implement the provisions of the National Land Code (Act 828), section 12 empowers the State Authority may appoint for the State-

- i) a State Director of Lands and Mines;
- ii) a Registrar of Titles;
- iii) a State Director of Survey and Mapping; and
- iv) so many Deputy Directors of Lands and Mines, Assistant Directors of Lands and Mines, Deputy Registrars of Titles, Deputy Directors of Survey and Mapping, District Land Administrators, Assistant District Land Administrators, Survey Officers, Settlement Officers and other officers as the State Authority may consider necessary for the purpose of the National Land Code (Act 828).

Delegation Of Powers

- ❑ Under section 13, the State Authority may by notification in the Gazette delegate to the State Director, or to the Registrar, or to any Land Administrator or other officer appointed under section 12 of the National Land Code (Act 828).

- ❑ State authority shall not delegate any power to:
 - i) To make rules related to land; and
 - ii) To dispose of any land within fifty metres of any river bank, lake or spring as Gazette or shoreline

- ❑ Although the State Authority delegate the powers to the officials, it shall not prevent the State Authority from itself exercising that power or performing that duty in any case where it appears to the State Authority expedient to do so.

Property In State Land, Minerals And Rock Material

□ Section 40 of the National Land Code (Act 828) declares that:

- i) all State land within the territories of the State;
- ii) all minerals and rock material within or upon any land in the State the rights to which have not been specifically disposed of by the State Authority.

Power Of Disposal

□ Under section 41 of the National Land Code (Act 828), State Authority shall have all the powers of disposal conferred by section 42 with respect to section 42:

- i) property vested in it under section 40,
- ii) reserved land, and
- iii) Mining land

□ which powers shall be exercised in such manner and to such extent as is authorised by the provisions of this Act, and not otherwise.

Power Of Disposal

❑ The State Authority shall have power under the National Land Code (Act 828) :

- i) to alienate State land;
- ii) to reserve State land, and grant leases of reserved land;
- iii) to permit the occupation of State land, reserved land and mining land under temporary occupation licences;
- iv) to permit the extraction and removal of rock material from any land, other than reserved forest; and
- v) to permit the use of air space on or above State land or reserved land.

Power Of Disposal

- ❑ Nothing in the National Land Code (Act 828) shall enable the State Authority (not allow):
 - i) to dispose of any land for the purposes of mining (within the meaning of the Mining Enactment);
 - ii) to permit the extraction or removal of rock material from any land for the purpose of obtaining metal or mineral therefrom;
 - iii) to dispose of any land for the purpose of the removal of forest produce therefrom; or
 - iv) to alienate any land so as to have the effect of less than two-fifths of a hectare of land subject to the category "agriculture" or to any condition requiring its use for any agricultural purpose being held by more than one person or body, provided that the State Authority may, under exceptional circumstances, alienate such land to more than one person or body notwithstanding that it is less than two-fifths of a hectare.

Information To Be Kept Secret

❑ To be kept secret (Section 19 National Land Code, Act 828). Every officer appointed and every person employed in any Survey Office, Land Office or Registry:

- i) shall maintain, and aid in maintaining, the secrecy of all matters which come to his knowledge in the performance of his duties; and
- ii) except for the purpose of carrying into effect the provisions of the National Land Code 1965, shall not communicate or divulge, or aid in divulging, any such matter to any other person

Purchase Of Land By Officers

Purchase of land (Section 20 National Land Code, Act 828). Where any land or interest is offered for sale in pursuance of any provision of National Land Code (Act 828), none of the following persons shall acquire, or attempt to acquire, it for himself, directly or indirectly:

- a) Director of Lands and Mines Office, Registrar and Director of Survey and Mapping of the State in which the land or interest is situated,
- b) any Land Administrator, District Officer, Settlement Officer or Survey Officer having jurisdiction in the district or sub-district in which the land or interest is situated.

Purchase Of Land By Officers

- c) any person employed under any of the officers referred to (a) or (b) above,
- d) any person having any duty to perform in connection with the sale.

❑ Safe keeping of registers (Section 375 National Land Code, Act 828). No register, instrument, book or other record including digital data and information on any matters virtually stored in the land database of land Registry and the Disaster Recovery Centre for the safe keeping of which the Registrar is responsible shall be removed from the Registry or Land Office except pursuant to an order of the Court or a Judge, or under the direction in writing of the State Authority or State Director.

Penalties

Any person contravening the provisions of section, section 20, sub-section (2) of section 375 and sub-section (1) of section 379 shall be guilty of an offence, and liable on conviction to a fine not exceeding ten thousand ringgit (RM10,000), or imprisonment for a term not exceeding six months.

Protection Of officers (Section 22)

No officer appointed under section 6 or section 12 shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under the National Land Code (Act 828).

Enforcement

❑ It is one of the tasks and responsibilities that must be carried out by the land administrator as stated in the National Land Code (Act 828).

❑ Section 425(1) National Land Code (Act 828) stated any person who, without lawful authority:

- i) Occupies, or erects any building on, any State land, reserved land or mining land, or
- ii) Clears, ploughs, digs, encloses or cultivates any such land or part thereof; or
- iii) Cuts or removes any timber or produce on or from such land

shall be guilty of an offence, and liable on conviction to a fine not exceeding five hundred thousand ringgit (RM500,000), or imprisonment for a term not exceeding five years.

Enforcement

❑ Under section 425(1A), any person who abets the commission of an offence shall be guilty of an offence as 425(1).

❑ Section 425A stated any person who without lawful authority uses or occupies the air space above State land or reserved land by erecting, maintaining or occupying a roof, canopy, bridge or any other structure shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand ringgit, or to imprisonment for a term not exceeding six months, or to both.

Enforcement

Section 426(1A) stated any person who has in his possession or custody, or under his control, any rock material otherwise than in the form in which it constitutes a natural part of the land on which it is found, shall be presumed to have extracted, removed, or transported or permitted the extraction, removal, or transportation of rock material without lawful authority.

Power Of Arrest And Seizure

Section 426A stated Any police officer not below the rank of Inspector, Registrar, Land Administrator, Settlement Officer or other officer duly authorised by the State Authority may without warrant:

- i) Arrest any person found committing or attempting to commit or abetting the commission of an offence under section 425 or 426;
- ii) Seize any vehicle, tractor, agricultural implement or other thing whatsoever which he has reason to believe was used or is being used in the commission of an offence under section 426A, and
- iii) Demolish, destroy or remove any building, or take possession in the name of the State Authority of any crop, erected or cultivated on any land in contravention.

Power Of Arrest And Seizure

❑ A Registrar, Land Administrator, Settlement Officer or authorised officer:

- i) May call upon any police officer for assistance in the exercise of the powers conferred; and
- ii) Without necessary delay make over the person so arrested to a police officer or take such person to the nearest police station

❑ The seizing officer shall forthwith give notice in writing of such seizure to the owner, either by delivering to him personally or by post or at his place of abode.

Forfeiture Of Things Seized (S426C)

- ❑ All things seized in exercise of the powers conferred under section 426A shall be liable to forfeiture.
- ❑ Where anything has been seized under section 426A, temporarily return such thing to the owner of the same on security being furnished to the satisfaction of the police officer, Registrar or Land Administrator that such thing shall be surrendered to him on demand or to produce it before a court of competent jurisdiction.
- ❑ An order for the forfeiture or for the release of anything seized in exercise of the powers conferred under section 426A shall be made by the court

Forfeiture Of Things Seized (S426C)

If there be no prosecution with regard to anything seized in exercise of the powers, such thing shall be taken and deemed to be forfeited at the expiration of one month from the date of seizure unless before that date a claim is made in the following manner:

- i) Any person asserting that he is the owner of such thing may personally or by his agent authorised in writing give written notice to claims seized items.
- ii) The police officer, Registrar of Land Administrator shall refer the claim to the President of a Sessions Court for decision
- iii) The President shall issue a summons requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before him and proceed to the examination of the matter and on proof that an offence has been committed or may in the absence of such proof order its release.¹¹⁹

Forfeiture Of Things Seized (S426C)

- All things forfeited or deemed to be forfeited shall be delivered to the Land Administrator and shall be disposed of in accordance with the direction of:
 - i) State Director of Lands and Mines;
 - ii) The Director General of Lands and Mines Office, where the offence is committed on land held by or on behalf of the Federal Government; and
 - iii) The authority concerned, where the offence is committed on land held by or on behalf of, a local authority, or a statutory authority exercising powers vested in it by Federal or State law.

Forfeiture Of Things Seized (S426C)

Where anything seized in exercise of the powers conferred under section 426A is of a perishable nature or where the custody of such thing involves unreasonable expense and inconvenience, the State Director, the Director General of Lands and Mines or the authority concerned may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

No Costs Or Damages Arising From Seizure To Be Recoverable (S426D)

No person shall in any proceeding before any court in respect of the seizure of anything seized in exercise or the purported exercise of the powers conferred under section 426A be entitled to the costs of such proceedings or subject to section 426C to any damages or other relief unless such seizure was made without reasonable or probable cause.

Unlawful Grazing Of Animals (S427)

No person shall graze any animal on any State land or reserved land except with the provisions of a permit issued by the Land Administrator or, in the case of reserved land, the officer for the time being having the control.

❑ Any person who contravenes the provisions or of any permit issued thereunder, shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand ringgit.

Obstruction Of Land Administrator's Rights Of Way, Roads And Other Public Places (S428)

- Where the Land Administrator is satisfied that there has been any wrongful obstruction of, or encroachment upon, any Land Administrator's right of way, or any public road or waterway or other place to which the public are entitled to access, he may make an order requiring the person or persons responsible to remove the obstruction or encroachment.
- Any person who wrongfully obstructs or encroaches upon any such right of way, road, waterway or place shall be guilty of an offence, and liable on conviction to a fine exceeding five thousand ringgit, or imprisonment for a term not exceeding six months, or to both.
- Any person convicted of an offence under this section may, in addition to any fine imposed on the conviction, be ordered to pay to the State Authority the costs or any steps reasonably taken for the removal of the obstruction or encroachment.

Wrongful receipt Of information (S428A)

If any person receives any information relating to any matter knowing or having reasonable grounds to believe at the time he receives it that the information is communicated or divulged to him in contravention of section 19, he shall, unless he proves that the information was communicated or divulged to him contrary to his desire, be guilty of an offence, and liable on conviction to a fine not exceeding five thousand ringgit, or imprisonment for a term not exceeding six months, or to both.

Institution Of Prosecution (S429A)

- No prosecution for or in relation to any offence shall be instituted except by or with the consent in writing of the Public Prosecutor.
- For prosecution under section 400 (notice to show boundary) and section 403 (obstruction of boundary mark) can be instituted by State Director of Survey and Mapping.

Compounding Of Offences (S429B)

- ❑ The State Director or Land Administrator may, with the written consent of the Public Prosecutor, make a written offer to the person reasonably suspected of having committed an offence to compound the offence upon payment to the State Director or Land Administrator such amount not exceeding fifty per centum of the amount of maximum fine for that offence.
- ❑ No prosecution shall thereafter be instituted in respect of such offence against the person whom the offer to compound was made

STATES LAND RULES

States Land Rules

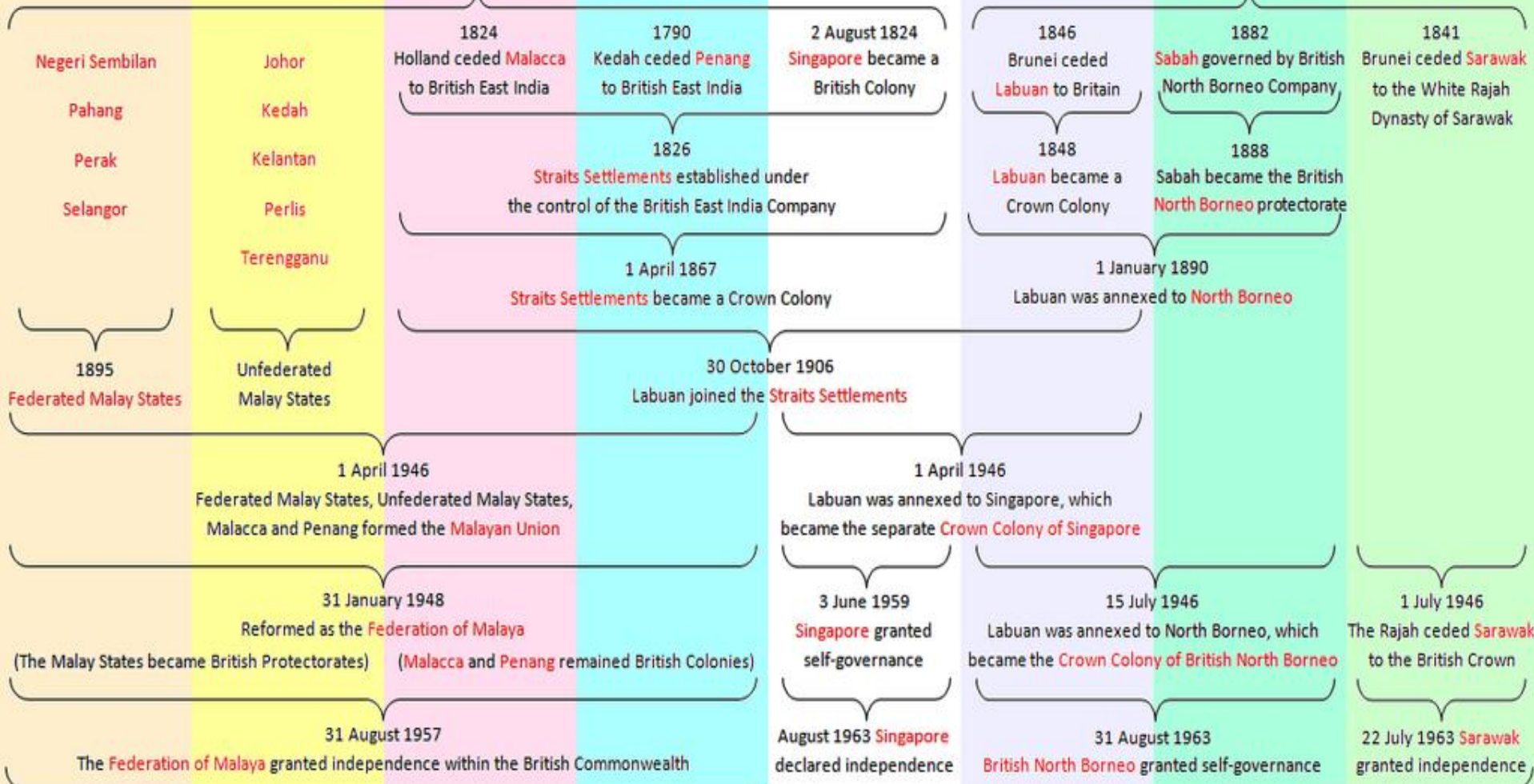
- Federal Territory of Kuala Lumpur Land Rules 1995.
- Federal Territory of Putrajaya Land Rules 2002.
- Johore Land Rules 1966.
- Kedah Land Rules 1966.
- Kelantan Land Rules 1966.
- Kelantan Quarry Rules 1977.
- Malacca Land Rules 1966.
- Land Titles Rules (Malacca) 1965.

States Land Rules

- The Negeri Sembilan Land Rules 1966.
- Pahang Land Rules 1992.
- Penang Land Rules 1965.
- Perak Land Rules 1966.
- Perak Quarry Rules 1992.
- Perlis Land Rules 1987.
- Sabah Land Rules 1930.
- Sarawak Land Rules (Sarawak Cap. 81).
- Selangor Land Rules 1966.
- Terengganu Land Rules 1966.

Collectively known as "British Malaya"

Collectively known as "British Borneo"



Rasional dan Skop Kanun Tanah Negara

❑ Kanun Tanah Negara 1965 (KTN) telah dikanunkan mengikut Perkara 76(4) Perlembagaan Persekutuan pada 18 September 1965. Ia mula berkuatkuasa pada 1hb Januari 1966 (melalui L.N. 474/1965) dalam semua Negeri di Semenanjung Malaysia. Tujuannya ialah untuk mengadakan suatu sistem pemegangan dan urusan tanah yang seragam di semua sebelas Negeri di Semenanjung Malaysia.

❑ Sebelum 1hb Januari 1966, Negeri-Negeri di Semenanjung Malaysia ini mempunyai 2 sistem pemegangan tanah yang berbeza. Negeri Pulau Pinang dan Melaka mengamalkan sistem yang khusus bagi Negeri-Negeri Selat dahulu (yang diasaskan kepada undang-undang harta dan pemindah hak Inggeris) di mana surat ikatan yang disempurnakan secara persendirian merupakan asas kepada hakmilik tanah.

Rasional dan Skop Kanun Tanah Negara

❑ Sebaliknya sembilan Negeri yang lain di Semenanjung mengamalkan suatu sistem yang berasaskan prinsip hak persendirian ke atas tanah hanya dapat diperolehi melalui dua cara. Pertamanya melalui pemberian secara nyata oleh Kerajaan Negeri atau keduanya melalui pendaftaran yang dilakukan oleh Kerajaan ke atas urusan seterusnya yang dibenarkan menurut undang-undang.

❑ Kanun Tanah Negara 1965 telah digubal berdasarkan (Land Code) (NMB Bab 138) iaitu undang-undang yang berkuatkuasa di Negeri Sembilan, Pahang, Perak dan Selangor sebelum 1 Januari 1966.

Rasional dan Skop Kanun Tanah Negara

- ❑ Bagi menyelaraskan sistem yang terpakai di Pulau Pinang dan Melaka, Akta Kanun Tanah Negara (Hakmilik Pulau Pinang dan Melaka) telah dikanunkan pada tahun 1963 dan dikuatkuasakan pada 1hb Januari 1966 (melalui L.N. 475/1965).
- ❑ Justeru dengan wujudnya Kanun Tanah Negara 1965 dan Akta Kanun Tanah Negara (Hakmilik Pulau Pinang dan Melaka) (sekarang Akta 518), kesemua sebelas Negeri di Semenanjung Malaysia mempunyai sistem pemegangan dan urusan tanah yang tunggal bermula 1hb Januari 1966. Ini juga bererti bahawa mulai dari tarikh ini kesemua sebelas Negeri di Semenanjung Malaysia memakai Sistem Torrens.

Ciri-Ciri Tanah Sebagaimana Yang Diamalkan

Sistem Torrens menetapkan dan memperakui, di bawah kuasa kerajaan, kepunyaan, hakmilik tanah yang tidak boleh disangkal dan memudahkan, mempercepatkan dan merendahkan perbelanjaan segala urusan tanah. Tujuan Sistem Torrens ialah untuk memberi jaminan dan kesenangan kepada segala urusan tanah. Hakmilik adalah bukti muktamad bahawa orang yang disebutkan di dalamnya adalah tuan punya tanah yang dinyatakan di dalamnya.

Ciri-Ciri Tanah Sebagaimana Yang Diamalkan

Hakmilik-hakmilik tanah yang sah memerlukan perihal sempadan-sempadan yang tepat. Ini bererti bahawa pengukuran tanah yang cekap mestilah dibuat. Suatu hakmilik boleh dikeluarkan dari tanah dengan apa-apa perihal sempadan yang munasabah, tetapi jika sempadan-sempadan itu tidak tepat sedangkan hakmilik itu masih lagi tidak boleh disangkal. Ia mungkin akan terdedah kepada pertikaian mengenai sempadan. Dengan pengukuran yang tepat kemungkinan berlakunya apa-apa pertikaian sempadan adalah terhapus dan dengan yang demikian hakmilik itu sebenarnya menjadi tidak boleh disangkal dari segala segi.

Ciri-Ciri Tanah Sebagaimana Yang Diamalkan

Daripada apa yang disebutkan di atas maka boleh disimpulkan bahawa ciri-ciri utama Sistem Torrens adalah seperti berikut:

- Dokumen hakmilik yang dengan jelas menentukan tanah itu difailkan di Pejabat Tanah atau Pejabat Pendaftar.
- Di dalam hakmilik itu didaftarkan segala jualan dan urusan yang kemudian atas tanah itu.

Ciri-Ciri Tanah Sebagaimana Yang Diamalkan

- ❑ Pemeriksaan pada bila-bila masa di Pejabat Tanah atau Pejabat Pendaftar menunjukkan bukan sahaja butiran mengenai syarat-syarat hakmilik asal tetapi juga nama-nama tuannya pada masa ini dan semua orang lain yang ada kepentingan atas tanah seperti pajakan atau gadaian.
- ❑ Hendaklah diperhatikan bahawa Sistem Torrens berasal dari Australia Selatan. Sistem ini dinamakan dengan mengambil sempena nama Sir Robert Torrens yang memperkenalkannya di Australia Selatan dalam tahun 1858. Kemudian ia berkembang ke seluruh Australia dan bahagian-bahagian lain di dunia.

Ciri-Ciri Tanah Sebagaimana Yang Diamalkan

Antara kebaikan-kebaikan Sistem Torrens adalah seperti berikut:

- ❑ Tiap-tiap orang yang memiliki tanah akan memegang suatu dokumen hakmilik yang kelas, dijamin oleh kerajaan, membentangkan bukan sahaja untuk pengetahuannya segala syarat-syarat dan kepentingan-kepentingan lain yang melibatkan tanah itu.
- ❑ Tiap-tiap orang boleh memperniagakan tanah secara pendaftaran dengan mudah tanda memerlukan carian yang rumit dan mahal menerusi dokumen-dokumen yang dahulu.
- ❑ Hakmilik bagi tanah itu dan hak-hak semua orang yang memegang pajakan atau gadaian akan tidak boleh disangkal.

Sistem Tanah Di Pulau Pinang dan Melaka Sebelum 1hb Januari 1966

❑ Asas hakmilik tanah ialah pemberian oleh Kerajaan. Tetapi dokumen hakmilik tidak pernah digunakan sebagai daftar urusan-urusan yang kemudian dan maklumat yang boleh diperolehi daripadanya hanyalah nama tuannya asal. Urusan mengenai tanah adalah sangat rumit.

❑ Sebagai contoh, dalam jualan tanah, pemberi menerima daripada penjual suatu surat ikatan pindah hak yang adalah merupakan rekod tunggal bahawa penjualan telah dilakukan dan bukti tunggal bahawa pembeli yang baru adalah tuannya.

Sistem Tanah Di Pulau Pinang dan Melaka Sebelum 1hb Januari 1966

□ Bagi tiap-tiap jualan yang kemudain, proses yang sama diulangi supaya selepas beberapa urusan, akan terdapat keseluruhan rangkaian pindah hak itu (atau surat ikatan hakmilik sebagaimana yang pindah hak itu dipanggil) yang dengannya tuanpunya-tuanpunya yang berturut-turut telah menerima hakmilik daripada tuanpunya-tuanpunya yang terdahulu sebelum sahaja daripada mereka itu.

□ Untuk memastikan bahawa tuanpunya tanah pada masa itu mempunyai hakmilik yang sah, tiap-tiap hubungan dalam rangkaian ini mesti diperiksa. Pemeriksaan kebelakangan dari seorang penjual ke seorang penjual (yang menurut undang-undang mesti dibawa kembali 30 tahun ke belakang atau lebih) memerlukan perkhidmatan peguam pindah hak yang layak tetapi hanya selepas ianya dibuat barulah ada bukti yang memuaskan bahawa mana-mana tuanpunya mempunyai hakmilik yang sah.

Sistem Tanah Di Pulau Pinang dan Melaka Sebelum 1hb Januari 1966

□ Ringkasannya di Pulau Pinang dan Melaka sebelum 1hb Januari 1966, segala pertalian di antara tuannya sekarang dan hakmilik asal telah tertutup sepenuhnya dan bukti hakmilik adalah terletak, bukan dalam dokumen hakmilik yang dikeluarkan oleh kerajaan dan bukan dalam daftar urusan rasmi tetapi terletak semata-mata kepada keterangan dari rangkaian dokumen-dokumen persendirian.

□ Hendaklah diperhatikan bahawa sistem yang dihuraikan di atas adalah juga dikenali sebagai Sistem Pendaftaran Surat Ikatan. Ianya dikenali sedemikian oleh sebab di bawah Ordinan-Ordinan yang terpakai kepada Pulau Pinang dan Melaka ketika itu, tiada sebarang surat ikatan yang melibatkan tanah boleh diterima sebagai sah oleh pegawai awam atau mahkamah melainkan jika surat ikatan itu telah didaftarkan di Pejabat Pendaftaran Surat Ikatan di Pulau Pinang dan Melaka.

Faktor-Faktor Yang Mempengaruhi Kejayaan Sistem Tanah Sekarang

- ❑ Kejayaan sistem tanah sekarang sangat-sangat bergantung kepada kecepatan mendaftarkan hakmilik-hakmilik tanah. Ini pula bergantung kepada kecekapan Jabatan Ukur dan Pejabat Tanah. Jika pengukuran tanah tidak dilakukan dengan tepat dan secepatnya dan sekiranya Pejabat Tanah mengambil masa yang panjang untuk menulis dan mendaftarkan hakmilik, maka sistem ini tidak akan berjaya.
- ❑ Berkenaan urusan mengenai tanah, untuk memastikan kejayaan sistem ini, maka tidak sepatutnya berlaku kelambatan dan kesilapan dalam pendaftaran. Kesemua ini menunjukkan betapa perlunya pengawasan yang amat tegas pihak pegawai-pegawai kanan di Pejabat Tanah ke atas kekitangan bawahan mereka. Adalah tidak mungkin bagi mereka untuk berbuat demikian tanpa pengetahuan dan kemahiran yang perlu, masa yang cukup dan dorongan yang sepatutnya.

Undang-Undang Tanah Sebelum Kanun Tanah Negara 1965

- ❑ Sebelum wujudnya Kanun Tanah Negara 1965, Negeri-Negeri di Semenanjung Malaysia menggunakan undang-undang tanah Negeri masing-masing.
- ✓ Pahang, Negeri Sembilan, Selangor dan Perak – land Code (Cap 138)
- ✓ Pulau Pinang dan Melaka – Land Ordinance (Cap 113)
- ✓ Johor – Land Enactment (No.1)
- ✓ Kedah – Land Enactment (No.56)
- ✓ Kelantan – Land Enactment 1938
- ✓ Perlis – Land Enactment 1356
- ✓ Terengganu – Land Enactment 1357

Kuasa Membuat Undang-Undang

❑ Di dalam Perkara 74 Perlembagaan Persekutuan, bidangkuasa-bidangkuasa Kerajaan Persekutuan dan Kerajaan Negeri telah dibahagikan dengan jelasnya, iaitu mengikut perkara-perkara yang disenaraikan dalam Jadual Ke Sembilan. Contohnya:

Kerajaan Persekutuan

- ✓ Hal Ehwal Luar Negeri
- ✓ Pertahanan
- ✓ Pelajaran
- ✓ Pengangkutan
- ✓ Kesihatan

Kerajaan Negeri

- ✓ Hal Ehwal Agama Islam
- ✓ Perhutanan
- ✓ Tanah
- ✓ Pertanian

Kuasa Membuat Undang-Undang

Kuasa untuk membuat undang-undang hendaklah mengikut bidang kuasa masing-masing, iaitu bagi perkara-perkara di bawah bidang kuasa Kerajaan Persekutuan, hanya Parlimen boleh membuat undang-undang mengenainya dan bagi perkara-perkara di bawah bidang kuasa Kerajaan Negeri, hanya Badan Perundangan Negeri (Dewan Undangan Negeri) boleh membuat undang-undang mengenainya (melainkan dalam keadaan-keadaan tertentu).

Kuasa Membuat Undang-Undang

Tanah adalah perkara di bawah bidang kuasa Kerajaan Negeri. Maka undang-undang tanah seharusnya dibuat oleh Badan Perundangan Negeri. Walau bagaimanapun, Kanun Tanah Negara adalah sebuah undang-undang tanah yang dibuat oleh Parlimen, iaitu Akta Parlimen No. 56 tahun 1965. Ini boleh dilakukan oleh Parlimen di bawah kuasa yang dikurniakan oleh Perkara 76(4), di mana dinyatakan bahawa bagi maksud hanya menentukan persamaan undang-undang dan dasar, Parlimen boleh membuat undang-undang mengenai perkara-perkara tertentu berkaitan dengan tanah.

Batasan Kuasa Kanun Tanah Negara

❑ Sungguhpun Kanun Tanah Negara 1965 merupakan undang-undang tanah yang utama, namun ianya tidak boleh mengatasi beberapa undang-undang tanah yang lain iaitu:

- i) Terengganu Settlement Enactment 1356;
- ii) Akta Penanam Padi (Mengawal Sewa dan Menjamin Pemegangan) 1967;
- iii) Ordinan Penyelesaian Tanah Kelantan 1955;
- iv) Akta Tanah (Kawasan Penempatan Berkelompok) 1960; dan
- v) Mana-mana undang-undang mengenai pengecualian daripada pembayaran hasil tanah.

Batasan Kuasa Kanun Tanah Negara

❑ Selain daripada itu, peruntukan-peruntukan Kanun Tanah Negara (Akta 828) tidak boleh digunakan jika ianya bercanggah dengan peruntukan-peruntukan mana-mana undang-undang mengenai:

- i) Tanah Pemegang Adat;
- ii) Tanah Rizab Melayu/Pemegangan Melayu;
- iii) Tanah lombong;
- iv) Tanah Kesultanan; dan
- v) Tanah wakaf atau baitulmal.

Perundangan Subsidiari Di Bawah Kanun Tanah Negara

Kanun Tanah Negara 1965 memberikan kuasa kepada beberapa pihak, Yang di-Pertua Agong, Menteri dan Pihak Berkuasa Negeri untuk membuat perundangan subsidiari seperti perintah, peraturan dan kaedah. Bagi pemakaiannya di Pulau Pinang dan Melaka, Kanun Tanah Negara 1965 telah diubahsuai seperti yang terkandung dalam Perintah Kanun Tanah Negara (Pulau Pinang dan Melaka) 1965, Perintah Kanun Tanah Negara (Melaka) 1967 dan Perintah Kanun Tanah Negara (Pulau Pinang dan Melaka) 1968.

Perundangan Subsidiari Di Bawah Kanun Tanah Negara

Perintah-perintah ini dibuat oleh Yang DiPertua Agong menurut Seksyen 439 Kanun Tanah Negara (Akta 828). Suatu contoh perundangan subsidiari di bawah Kanun Tanah Negara (Akta 828) yang dibuat oleh Menteri ialah Perintah Kanun Tanah Negara (Bayaran-Bayaran Ukur) 1965. Pihak Berkuasa Negeri bagi setiap Negeri di Semenanjung Malaysia telah mengadakan Kaedah-Kaedah Tanah yang terpakai bagi Negeri masing-masing.

Pemakaian KTN 1965 Di Wilayah Persekutuan Kuala Lumpur

□ Bagi pemakaian di Wilayah Persekutuan Kuala Lumpur, Kanun Tanah Negara 1965 telah diubahsuai oleh Perintah Wilayah Persekutuan (Pengubahsuaian Kanun Tanah Negara) 1974 (P.U.(A) 56/1974). Perintah ini dibuat mengikut Seksyen 5(3) Akta Perlembagaan (Pindaan) (No.2) 1973 (Akta A206).

□ Menurut Perintah ini, kuasa Pihak Berkuasa Negeri dalam Kanun Tanah Negara (Akta 828) diberikan sama ada kepada Kerajaan Persekutuan atau Menteri yang bertanggungjawab bagi tanah di Wilayah Persekutuan.

Pemakain KTN 1965 Di Wilayah Persekutuan Kuala Lumpur

□ Selaras dengan perintah ini juga, jawatan Pengarah Tanah dan Galian digantikan dengan Jawatankuasa Kerja Tanah. Jawatankuasa ini mempunyai kuasa Pengarah Tanah dan Galian. Tambahan pula, jawatankuasa ini juga diberikan kuasa oleh Kerajaan Persekutuan secara perwakilan menurut Seksyen 13 Kanun Tanah Negara 1965 (melalui P.U.(B) 597/1974).

□ Setiap tindakan atau perkara yang dilakukan oleh Jawatankuasa ini yang tidak ditampung dalam pewartaan ini telah disahkan melalui Akta Kanun Tanah Negara (Pengesahan) 2003 (Akta 625). Perwakilan Kuasa yang baru telah diwartakan melalui P.U.(B) 108/2003. Namun begitu, jawatan Pendaftaran Hakmilik dan Pentadbiran Tanah masih wujud dan dipegang oleh orang yang sama.

Kuasa Pentadbiran Tanah

Sebagaimana yang termaktub di dalam Perlembagaan Persekutuan, segala hal ehwal berkaitan dengan pentadbiran tanah di dalam sesuatu Negeri adalah di bawah bidang kuasa Kerajaan Negeri berkenaan. Di dalam Kanun Tanah Negara (Akta 828), kuasa ini disebut sebagai Pihak Berkuasa Negeri (PBN), yang ditakrifkan sebagai Raja/Sultan atau Yang di-Pertua Negeri.

Kawasan Pentadbiran

□ Di bawah Seksyen 11 Kanun Tanah Negara (Akta 828), Pihak Berkuasa Negeri boleh melalui pemberitahuan di dalam warta kerajaan:

- i) Membahagikan Negeri kepada Daerah-Daerah;
- ii) Membahagikan mana-mana Daerah kepada Daerah-Daerah kecil;
- iii) Membahagikan mana-mana Daerah atau Daerah kecil kepada Mukim-Mukim;
- iv) Mengubah sempadan mana-mana Daerah. Daerah kecil, Mukim, Bandar atau Pekan; dan
- v) Mengisytiharkan mana-mana kawasan dalam Negeri sebagai suatu Bandar atau Pekan.

Kawasan Pentadbiran

□ Sempadan perairan laut sesebuah Negeri ada dinyatakan di bawah Seksyen 5 Kanun Tanah Negara (Akta 828) iaitu dengan merujuk kepada Seksyen kecil 2 kepada Seksyen 4 Emergency (Essential Powers) Ordinance, No.7/1969, P.U.(A)307A/69.

□ Sempadan ini ditakrifkan sebagai kawasan yang bersempadan dengan persisiran pantai dan tidak melebihi 3 batu notika yang dikira dari tikas paras surut) (perairan wilayah (Negeri), terrestrial water). Manakala, 12 batu nautikal bagi perairan wilayah (Persekutuan). Rujuk Akta Laut Wilayah 2012.

Pelantikan Pegawai

❑ Selain daripada kuasa-kuasa yang diberikan kepada Pihak Berkuasa Negeri, Kanun Tanah Negara (Akta 828) juga memperuntukan kuasa-kuasa tertentu kepada pegawai-pegawai seperti Pengarah Tanah dan Galian Negeri, Pendaftar Hakmilik, Pentadbir Tanah dan lain-lain.

❑ Untuk melaksanakan peruntukan-peruntukan Kanun Tanah Negara 1965 dengan teratur dan sempurna, Seksyen 12 memberikan kuasa kepada Pihak Berkuasa Negeri melantik bagi Negerinya:

- i) Seorang Pengarah Tanah dan Galian (PTG);
- ii) Seorang Pendaftar Hakmilik;
- iii) Seorang Pengarah Ukur dan Pemetaan; dan
- iv) Beberapa ramai Timbalan PTG, Penolong PTG, Timbalan Pendaftar hakmilik, Pentadbir Tanah, Pegawai Ukur dan Pemetaan, Pegawai Penempatan dan lain-lain pegawai yang difikirkan perlu bagi maksud Kanun Tanah Negara (Akta 828).

Perwakilan Kuasa

❑ Di bawah Seksyen 13 Kanun Tanah Negara (Akta 828), Pihak Berkuasa Negeri boleh mewakilkan kuasa-kuasanya kepada PTG, Pendaftar, mana-mana Pentadbir Tanah atau lain-lain pegawai yang dilantik di bawah Seksyen 12 Kanun Tanah Negara (Akta 828). Perwakilan ini hendaklah disiarkan di dalam Warta Kerajaan.

❑ Pihak Berkuasa Negeri tidak boleh mewakilkan mana-mana kuasanya:

- i) Untuk membuat Kaedah Tanah; dan
- ii) Untuk melupuskan mana-mana tanah dalam lingkungan 50 meter dari tebing sungai, tasik, ampangan yang diwartakan atau di pinggir laut.

Perwakilan Kuasa

Walaupun Pihak Berkuasa Negeri telah mewakilkan mana-mana kuasanya kepada pihak yang lain, ianya tidak menghalang penggunaan kuasa-kuasa itu oleh Pihak Berkuasa Negeri sendiri, jika pada pandangannya perlakuan tersebut lebih baik.

Harta Dalam Tanah

☐ Seksyen 40 Kanun Tanah Negara (Akta 828) menisytiharkan bahawa:

- i) Semua tanah dalam Tanah Kerajaan; dan
- ii) Semua galian dan bahan batuan yang terkandung di dalam atau di atas mana-mana tanah (kecuali jika hak-hak ke atasnya telah dilupuskan oleh Pihak Berkuasa Negeri) adalah terletak hak hanya kepada Pihak Berkuasa Negeri .

Kuasa Pelupusan

❑ Di bawah Seksyen 41 Kanun Tanah Negara (Akta 828), Pihak Berkuasa Negeri mempunyai kuasa pelupusan sepenuhnya yang dikurniakan oleh Seksyen 42 Kanun Tanah Negara (Akta 828) berhubung dengan:

- i) Harta yang terletak hak kepadanya di bawah Seksyen 40;
- ii) Tanah rizab; dan
- iii) Tanah lombong.

❑ Kuasa-kuasa ini hendaklah dijalankan mengikut cara-cara dan setakat mana yang diberikan oleh Kanun Tanah Negara (Akta 828) dan tidak selainnya.

Kuasa Pelupusan

□ Kuasa-kuasa pelupusan yang dikurniakan oleh Kanun Tanah Negara (Akta 828) kepada Pihak Berkuasa Negeri meliputi:

- i) Berimilik iaitu memberimilik Tanah Kerajaan;
- ii) Rizab iaitu merizabkan Tanah Kerajaan dan memberi pajak tanah rizab;
- iii) Lesen iaitu mengeluarkan Lesen Pendudukan Sementara atas Tanah Kerajaan, tanah rizab dan tanah lombong;
- iv) Permit Bahan Batuan iaitu mengeluarkan permit mengambil dan mengalih bahan-bahan batuan daripada mana-mana tanah selain daripada tanah rizab hutan; dan
- v) Permit Ruang Udara iaitu mengeluarkan permit penggunaan ruang udara atas Tanah Kerajaan atau tanah rizab.

Hak Kuasa Pelupusan

❑ Di sebalik kuasa-kuasa pelupusan yang dikurniakan, Kanun Tanah Negara (Akta 828) juga menghadkan kuasa-kuasa Pihak Berkuasa Negeri seperti berikut:

- i) Tidak boleh melupuskan mana-mana tanah bagi maksud melombong;
- ii) Tidak boleh membenarkan pengambilan atau pengalihan bahan batuan daripada mana-mana tanah bagi maksud mendapatkan logam atau galian daripadanya;
- iii) Tidak boleh melupuskan mana-mana tanah bagi maksud pengalihan hasil hutan daripadanya; dan
- iv) Tidak boleh memberimilik tanah pertanian yang akan mengakibatkan keluasan kurang daripada $2/5$ hektar dipegang oleh lebih daripada satu orang atau badan kecuali dalam keadaan-keadaan yang luar biasa.

Tegahan Atas Pegawai

❑ Menyimpan Rahsia (Seksyen 9 Kanun Tanah Negara 1965).
Tiap-tiap pegawai yang dilantik di bawah Seksyen 6 atau 12 Kanun Tanah Negara (Akta 828) dan tiap-tiap orang yang berkhidmat dalam mana-mana Pejabat Ukur dan Pemetaan, Pejabat Tanah atau Pejabat Pendaftar Hakmilik:

- i) Hendaklah menjaga dan membantu menjaga kerahsiaan semua perkara yang sampai ke pengetahuannya dalam melaksanakan kewajipannya; dan
- ii) Janganlah hendaknya menyampai atau membocorkan, atau membantu membocorkan apa-apa perkara sedemikian kepada sesiapa pun, melainkan bagi maksud melaksanakan peruntukan-peruntukan Kanun Tanah Negara (Akta 828).

Tegahan Atas Pegawai

iii) Membeli Tanah (Seksyen 20 Kanun Tanah Negara (Akta 828)). Bila mana-mana tanah atau kepentingan di dalamnya ditawarkan untuk jualan menurut mana-mana peruntukan Kanun Tanah Negara (Akta 828), tiada siapa pun pada orang-orang yang berikut boleh memperolehnya untuk dirinya sendiri, sama ada secara langsung atau sebaliknya:

- a) Pagarah tanah dan Galian Negeri, Pendaftar dan Pengarah Ukur dan Pemetaan Negeri di mana tanah itu terletak.
- b) Mana-mana Pentadbir Tanah, pegawai Daerah, Pegawai Penempatan atau Pegawai Ukur dan Pemetaan yang mempunyai bidang kuasa dalam daerah atau daerah kecil di mana tanah atau kepentingan itu terletak.

Tegahan Atas Pegawai

- c) Mana-mana orang yang berkhidmat di bawah mana-mana pegawai yang disebut di atas.
- d) Mana-mana orang yang mempunyai tugas berkaitan dengan penjualan itu.

❑ Mengalih Dokumen (Seksyen 375 Kanun Tanah Negara, Akta 828). Tiada siapa pun boleh mengalih apa-apa daftar, suratcara, buku atau rekod yang disimpan di mana pendaftar bertanggungjawab ke atasnya dari Pejabat Pendaftar Hakmilik atau Pejabat Tanah kecuali menurut suatu perintah Mahkamah atau seorang Hakim atau denganarahan bertulis daripada Pihak Berkuasa Negeri atau Pengarah Tanah dan Galian Negeri.

Hukuman

Mana-mana orang yang melanggar mana-mana peruntukan adalah dianggap melakukan satu kesalahan, dan jika disabit boleh dikenakan dengan tidak melebihi RM10000 atau penjara tidak lebih dari 6 bulan.

Perlindungan Atas Pegawai (Seksyen 33)

Tiada seorang pegawai jua yang dilantik di bawah Seksyen 6 atau Seksyen 12 Kanun Tanah Negara (Akta 828) boleh didakwa dalam mana-mana mahkamah sivil kerana apa-apa perbuatan atau perkara yang dilakukan atau diperintah untuk dilakukan, atau ditegah dari melakukan olehnya dengan sucihati dengan niat untuk menjalankan apa-apa kuasa atau kewajipan yang diberi atau dikenakan ke atasnya oleh atau di bawah Kanun Tanah Negara 1965.

Penguatkuasaan

❑ Merupakan salah satu daripada tugas dan tanggungjawab yang mesti dilaksanakan oleh anggota pentadbiran tanah sebagaimana yang dinyatakan dalam Kanun Tanah Negara (Akta 828).

❑ Seksyen 425(1) Kanun Tanah Negara (Akta 828) menyatakan bahawa mana-mana orang yang tanpa kuasa yang sah:

- i) Menduduki atau membina apa-apa bangunan di atas mana-mana tanah kerajaan, tanah rizab atau perlombongan;
- ii) Membersih, membajak, menggali, mengepungi atau menanami mana-mana tanah sedemikian atau bahagian daripadanya;
- iii) Memotong atau mengalih apa-apa kayuan atau hasil atas atau dari tanah demikian.

adalah melakukan satu kesalahan dan boleh jika disabitkan kesalahan boleh dikenakan denda tidak melebihi dari RM500,000 atau penjara tidak melebihi 5 tahun atau kedua-duanya sekali.

Penguatkuasaan

- ❑ Jika mana-mana orang juga didapati bersuhabat akan dikenakan hukuman yang sama di bawah Seksyen 425(1A) Kanun Tanah Negara 1965.
- ❑ Seksyen 425A Kanun Tanah Negara 1965 menyatakan mana-mana orang tanpa kuasa yang sah mengguna atau menduduki ruang udara yang terdapat di atas tanah kerajaan atau tanah rizab dengan cara mendirikan, menyelenggara atau menduduki bumbung, pepayung, jambatan atau mana-mana binaan lainnya adalah melakukan suatu kesalahan dan jika disabitkan boleh dikenakan denda tidak melebihi dari RM10,000 atau penjara tidak melebihi dari 6 bulan atau kedua-duanya sekali.

Penguatkuasaan

Seksyen 426(1A) Kanun Tanah Negara 1965 menyatakan bahawa mana-mana orang tanpa kuasa yang sah mengeluarkan, mengalih atau mengangkut atau membenarkan pengeluaran, pengalihan atau pengangkutan bahan batuan dari mana-mana tanah adalah melakukan satu kesalahan dan boleh jika disabitkan dikenakan denda denda tidak melebihi dari RM10,000 atau penjara tidak melebihi dari 1 tahun atau kedua-duanya sekali.

Kuasa Menahan dan Merampas

Seksyen 426A Kanun Tanah Negara (Akta 828) menyatakan mana-mana pegawai polis yang tidak rendah dari pangkat Inspektor, Pendaftar, Pentadbir Tanah, Pegawai Penempatan atau lain-lain pegawai yang diwibawakan dengan sempurna oleh Pihak Berkuasa Negeri bolehlah tanpa waran:

- i) Menahan mana-mana orang yang didapati melakukan atau cuba melakukan atau bersuhabat untuk melakukan suatu kesalahan di bawah Seksyen 425 atau 426 Kanun Tanah Negara (Akta 828);
- ii) Merampas apa-apa kenderaan, traktor, alat pertanian atau apa-apa benda lain sekalipun yang dipercayainya telah digunakan atau sedang digunakan di dalam melaksanakan suatu kesalahan di bawah seksyen 426A Kanun Tanah Negara (Akta 828); dan
- iii) Memusnahkan, membinasa atau mengalih mana-mana bangunan atau mengambil milik atas nama Pihak Berkuasa Negeri apa-apa bangunan atau tanaman yang dibina atau ditanam di atas mana-mana tanah sebagai pelanggaran terhadapnya.

Kuasa Menahan dan Merampas

- ❑ Pendaftar, Pentadbir Tanah, Pegawai Penempatan atau lain-lain pegawai yang diwibawakan boleh:
 - i) Meminta mana-mana pegawai polis membantu di dalam menjalankan kuasa yang diberi; dan
 - ii) Di dalam membuat penahanan tidak perlu membawa orang yang di tahan tanpa kelewatan kepada pegawai polis atau ke balai polis.

- ❑ Pegawai yang merampas hendaklah memberi notis bertulis kepada pemilik benda tentang rampasan serta alasan mengapa ianya dirampas kepada pemilik harta tersebut sama ada melalui pos atau menghantar ke tempat tinggal beliau.

Penyitaan Benda-Benda yang Dirampas (S426C)

- ❑ Segala barang yang dirampas dalam menjalankan kuasa-kuasa yang diberi hendaklah boleh dikenakan penyitaan.
- ❑ Benda yang dirampas atas budi bicara mengembalikan buat sementara apa-apa benda kepada pemilik benda itu apabila jaminan yang memuaskan diberi bahawa benda itu hendaklah diserahkan kepadanya atas permintaan atau untuk mengemukakannya di hadapan Mahkamah yang layak bidang kuasanya.
- ❑ Perintah penyitaan atau melepaskan hendaklah dibuat oleh Mahkamah.

Penyitaan Benda-Benda yang Dirampas (S426C)

Jika tidak ada dakwaan sekalipun dalam tempoh satu bulan dari tarikh rampasan ianya disifatkan sebagai disita selepas itu melainkan:

- i) Tuntutan dari pemilik benda tersebut sama ada secara persendirian atau melalui ejen memberi notis bertulis menuntut benda tersebut;
- ii) Pihak yang menyita hendaklah merujuk tuntutan tersebut kepada Hakim Mahkamah Sesyen untuk keputusan; dan
- iii) Hakim mengeluarkan saman untuk hadir di hadapannya dan meneruskan pemeriksaan sama ada ianya terbukti melakukan kesalahan atau tidak. Jika bersalah boleh disita, jika tidak, perlu ada bukti untuk melepaskannya.

Penyitaan Benda-Benda yang Dirampas (S426C)

❑ Semua barang yang dilucut hak hendaklah diserahkan kepada Pentadbir Tanah dan hendaklah dilupuskan menikut arahan:

- i) Pengarah Tanah dan Galian Negeri;
- ii) Pengarah Jabatan Ketua Pengarah Tanah dan Galian Negeri jika tanah dipegang oleh kerajaan Persekutuan; dan
- iii) Pihak berkuasa yang berkenaan jika tanah dipegang oleh Pihak Berkuasa Tempatan atau suatu pihak berkuasa berkanun yang menjalankan kuasa yang terletak hak padanya oleh undang-undang Persekutuan atau Negeri.

❑ Jika benda yang dirampas berbentuk boleh binasa atau melibatkan perbelanjaan yang tidak munasabah dan menyukarkan, pihak berkuasa berkenaan bolehlah mengarakan supaya benda itu dijual pada bila-bila masa dan hasil jualan itu dipegang menanti keputusan apa-apa dakwaan atau tuntutan di bawah seksyen ini.

Kos/Kerosakan dari Pampasan (S426D)

Tiada sesiapa pun boleh dalam mana-mana pembicaraan dihadapan mana-mana Mahkamah mengenai perampasan apa-apa benda yang dirampas dalam menjalankan kuasa yang diberi di bawah Seksyen 426A Kanun Tanah Negara 1965, berhak kepada kos pembicaraan sedemikian atau tertakluk kepada Seksyen 426C Kanun Tanah Negara (Akta 828) kepada apa-apa kerosakan atau lain pelepasan melainkan perampasan itu dibuat tanpa sebab yang munasabah atau mungkin.

Peragutan Haiwan yang Menyalahi Undang-Undang (S427)

□ Tiada sesiapa yang boleh membenarkan sebarang haiwan meragut di mana-mana tanah kerajaan atau tanah rizab kecuali menurut peruntukan-peruntukan suatu permit selaku demikian yang dilekuarkan oleh Pentadbir Tanah atau alam hal tanah rizab pula ialah pegawai yang pada masa itu mempunyai kawalan ke atasnya.

□ Mana-mana orang yang melanggar peruntukan-peruntukan di atas atau apa-apa permit yang dikeluarkan di bawahnya adalah melakukan satu kesalahan dan jika disabitkan boleh dikenakan denda yang tidak melebihi RM1000.

Halangan Kepada Hak Lalu Lalang Pentadbir Tanah, Jalan dan lain-lain Tempat Awam (S428)

- ❑ Jika halangan atau langgaran sempadan di atas mana-mana hak lalu lalang Pentadbir tanah atau mana-mana jalan atau jalan laut awam atau tempat lain yang mana orang awam berhak keluar masuk, ia bolehlah membuat suatu perintah kepada orang yang bertanggungjawab ke atasnya mengalih halangan atau langgaran sempadan tersebut.
- ❑ Denda menghalang atau melanggar sempadan adalah tidak melebihi RM5000 atau penjara tidak melebihi 6 bulan atau kedua-duanya sekali.
- ❑ Orang yang disabitkan kesalahan juga di samping denda, diperintah supaya membayar kos mengalih halangan dan pelanggaran sempadan.

Penerimaan Salah Apa-Apa Maklumat (S428A)

Jika mana-mana orang menerima apa-apa maklumat mengenai perkara yang diketahui atau dia mempunyai alasan yang munasabah untuk mempercayai pada masa ia menerima maklumat, maklumat itu telah diberitahu atau dizahirkan kepadanya bertentangan dengan Seksyen 19 Kanun Tanah Negara 1965 (maklumat hendaklah dirahsiakan), ia hendaklah melainkan ia membuktikan bahawa maklumat itu telah diberitahu atau dizahirkan kepadanya berlawanan dengan kehendaknya adalah melakukan suatu kesalahan dan boleh didenda tidak melebihi RM5000 atau penjara tidak melebihi 6 bulan atau kedua-duanya sekali.

Kuasa untuk Menjalankan Pendakwaan (S429A)

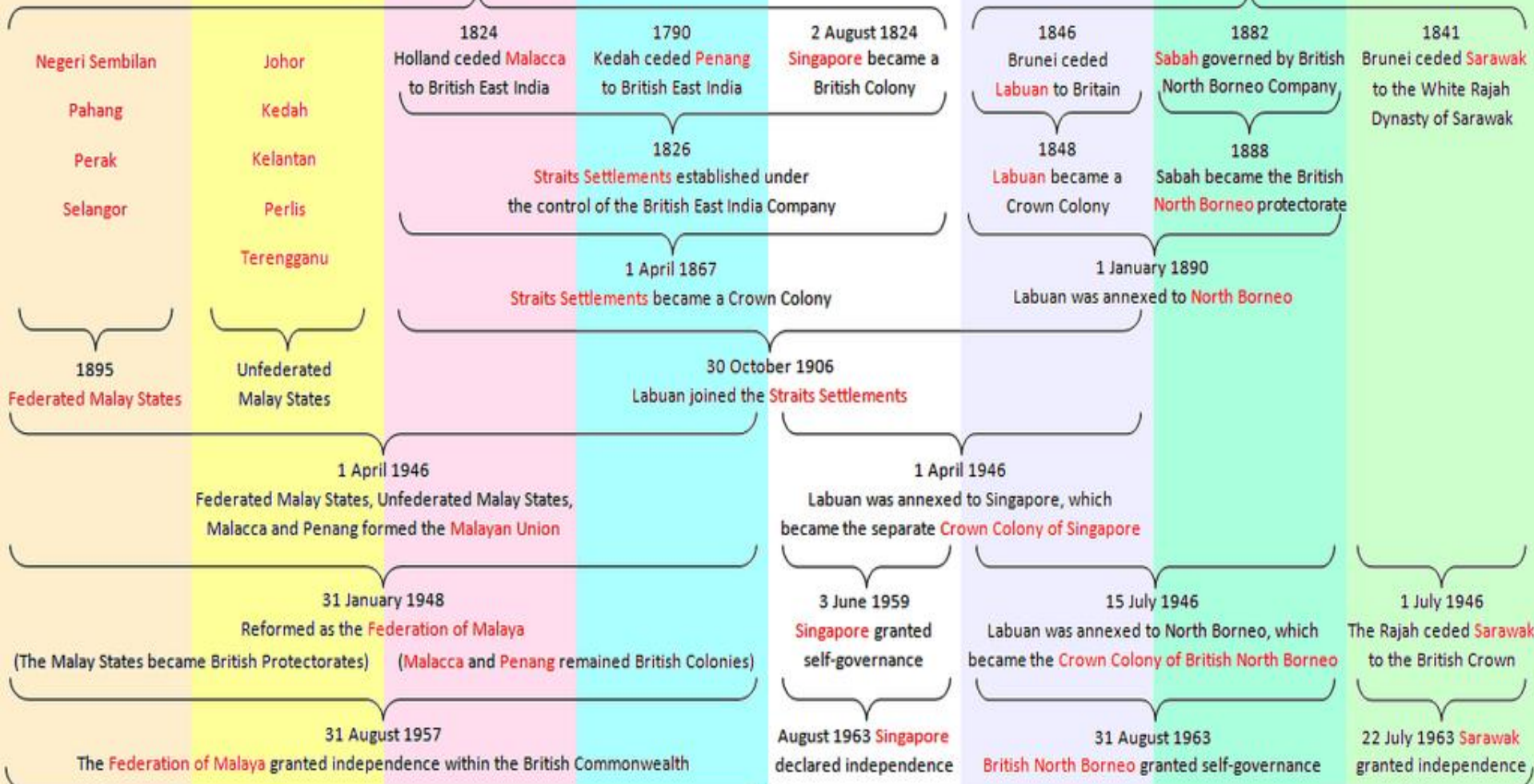
- ❑ Pendakwaan dijalankan oleh Pengarah Tanah dan Galian Negeri, Pentadbir Tanah atau mana-mana pegawai lain yang diberikan kuasa secara bertulis:
- ❑ Pendakwaan mengenai: Seksyen 400 Kanun Tanah Negara (Akta 828) (Notis untuk memastikan kehadiran bagi maksud menunjukkan sempadan-sempadan dan lain-lain) dan Seksyen 403 Kanun Tanah Negara 19 (Akta 828) 65 (Penalti kerana gangguan pada tanda-tanda rujukan ukur) boleh dijalankan oleh Pengarah Ukur dan Pemetaan Negeri.

Kuasa untuk Mengkompaun (S429B)

- ❑ Pengarah Tanah dan Galian Negeri atau Pentadbir Tanah bolehlah mengkompaun mana-mana kesalahan yang telah ditetapkan sebagai kesalahan daripada orang yang disyaki sejumlah wang tidak melebihi 50% daripada jumlah besar denda.
- ❑ Setelah membayar, jika ditahan hendaklah dilepaskan dan prosiding selanjutnya tidak boleh diambil kepada orang tersebut.

Collectively known as "British Malaya"

Collectively known as "British Borneo"



THANK YOU