

# LAND LAW AND SURVEY REGULATION (SBEU 4313)

## WEEK 13 - LAND ADMINISTRATOR'S RIGHT OF WAY

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# OUTLINE

- Administrator's Right of Way (Peninsular)
- Right of Way under Sarawak Land Code (Cap. 81) 1958
- Right of Way under Sabah Land Ordinance 1930 (Cap. 68)

# ADMINISTRATOR'S RIGHT OF WAY

# Types Of Land Administrator's Right Of Way

- ❑ A Land Administrator's Right of Way is a right created under Part Twenty-eight National Land Code (Act 828) (S388). Its creation is to enable a land owned by someone to be use by someone else as a means of access to a public terminal such as a public road.
  
- ❑ A Land Administrator's Right of Way is known as a **Private Right of Way if it is created** for the benefit of any of the following:
  - a) The State Authority;
  - b) Proprietor of any alienated land;
  - c) Occupier of any alienated land.
  
- ❑ A Land Administrator's Right of Way created for the benefit of the public is known as a **Public Right of Way**.

# Land Over Which Land Administrator's Right Of Way May Be Created

As provided in S389(5) National Land Code (Act 828), the Land Administrator's Right of Way can create a right of way only over an alienated land.

# Creation Of Private Right Of Way And Extent Of Its Use

- ❑ S390(1) National Land Code (Act 828) provides that a Private Right of Way is to be created only on an application by the State Authority, proprietor or occupier of any alienated land.
  
- ❑ 389(2) National Land Code (Act 828) provides that a Private Right of Way created upon an application by the State Authority will authorise the persons acting with the express or implied consent of the State Authority to do the following:
  - a) To pass and re-pass between the reserved land and a public terminal;
  - b) To pass and re-pass between a forest reserve and a public terminal; or
  - c) To pass and re-pass between a land and a public terminal for the purpose of removing rock material from that land.

# Creation Of Private Right Of Way And Extent Of Its Use

□ S389(3) National Land Code (Act 828) provides that a Private Right of Way created upon an application by a proprietor of any alienated land will authorise the following to be done:

- a) The proprietor of the land can pass and re-pass between that land and a public terminal;
- b) Any person having the consent of the proprietor in respect of the land can pass and re-pass between the land and a public terminal.

# Creation Of Private Right Of Way And Extent Of Its Use

S389(3) National Land Code (Act 828) provides that a Private Right of Way created upon an application by an occupier of any alienated land will authorise the following to be done:

- a) The occupier of the land can pass and re-pass between that land and a public terminal;
- b) Any person having the consent of the proprietor in respect of the land can pass and re-pass between the land and a public terminal.

# Creation Of Private Right Of Way And Extent Of Its Use

- ❑ It is also to be noted that the use of a right of way, whether created upon an application by the State Authority, proprietor or occupier of an alienated land, would also be subject to the content of the order of the Land Administrator made in accordance with S390(4) National Land Code (Act 828).
- ❑ For example, a proprietor of any alienated country land in whose favour a right of way has been created can pass and re-pass with vehicles if the order contains provisions empowering him to do so.
- ❑ S388(2) National Land Code (Act 828) provides that the rights conferred and obligations imposed in respect of any land by the creation of Administrator's Right of Way shall run with the land and shall be binding on the land's proprietors and occupiers for the time being.

# Creation Of Public Right Of Way And Extent Of Its Use

- ❑ S390(2)(b) National Land Code (Act 828) provides that a Public Right of Way is created by the Land Administrator if he is of the opinion that it is necessary to do so.
- ❑ As provides in S389(4), a Public Right of Way shall authorise the public to pass and re-pass between any specified area of land and a public terminal.
- ❑ The use of a Public Right of Way would also be subject to the order of the Land Administrator made in accordance with S390(4) National Land Code (Act 828).

# Survey Of Land For The Right Of Way

The area of alienated land to be used as a private or public right of way has to be surveyed [S390(1)(a) National Land Code (Act 828)]. This is to enable it to be shown in the Register Document of Title and Issue Document of Title [S391(2)(a)(ii) and (3)(a) National Land Code (Act 828)].

# Sharing Of Private Right Of Way

□ A provided in S394 National Land Code (Act 828), a proprietor or occupier of an alienated land situated adjacent to the land in respect of which a Private Right of Way has been created may share the use of that right or way if upon an application being made by him to the Land Administrator in Form 28C National Land Code (Act 828), the Land Administrator has ordered that he is entitled to share it.

□ The extent of sharing and the conditions to which the sharing are to be subject are as provided in the order. As required under S394(4) National Land Code (Act 828), the Land Administrator is to take appropriate action to have the memorial regarding the sharing made in the Register Document of Title and the Issue Document of Title.

# Extinction Of Right Of Way

❑ S95(1) National Land Code (Act 828) provides that the Land Administrator is to hold an enquiry and order the right of way to be extinguished if he is of the opinion that:

- a) Any person has failed to comply with any condition relating to the exercise by that person of a Land Administrator's Right of Way; or
- b) It is inexpedient that a Land Administrator's Right of Way should continue to exist.

❑ As provided in S395(2) National Land Code (Act 828), on making the order, the Land Administrator is required to take an action to have the memorials of the creation of right of way in the Register Document of Title and the Issue Document of Title cancelled.

# Compensation For Damage Caused By The Creation Of Right Of Way

❑ By virtue of S393(1) and (3) National Land Code (Act 828), no person shall be entitled to any compensation for the damage suffered as a result of the creation of a right of way other than the damage in respect of trees, crops or building.

❑ However in Penang and Malacca, under Paragraph 5 of the Third Schedule to the National Land Code (Penang and Malacca Titles) Act 1963, the provision of National Land Code limiting the amount of compensation payable (in respect of the damage caused by the creation of right of way) is not applicable to any land under a grant (first grade). The provision is also not application to any land under a title as stated in Paragraph 4 of the Third Schedule to the same Act.

# HAK LALU-LALANG PENTADBIR TANAH

# Jenis-Jenis Hak Lalu-Lalang Pentadbir Tanah

Hak lalu-lalang Pentadbir Tanah ialah hak yang diwujudkan di bawah Bahagian Dua Puluh Lapan Kanun Tanah Negara (Akta 828). Kewujudannya ialah untuk membolehkan tanah yang dimiliki oleh seseorang untuk digunakan oleh orang lain sebagai laluan keluar masuk kepada perhentian awam seperti jalan awam.

# Jenis-Jenis Hak Lalu-Lalang Pentadbir Tanah

□ Hak lalu-lalang Pentadbir Tanah dikenali sebagai hak lalu-lalang persendirian jika ianya diwujudkan bagi faedah mana-mana pihak yang berikut:

- (a) Pihak Berkuasan Negeri;
- (b) Tuan punya mana-mana tanah berimilik; dan
- (c) Penduduk mana-mana tanah berimilik.

□ Hak lalu-lalang yang diwujudkan untuk faedah orang ramai dikenali sebagai hak lalu-lalang awam.

# Tanah yang Boleh Diwujudkan Hak Lalu-Lalang Pentadbir Tanah

Seperti yang diperuntukkan dalam Seksyen 389(5) Kanun Tanah Negara (Akta 828), Pentadbir Tanah mewujudkan hak lalu-lalang hanya atas tanah bermilik.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

Seksyen 390(1) Kanun Tanah Negara (Akta 828) memperuntukkan bahawa hak lalu-lalang persendirian diwujudkan hanya atas permohonan oleh Pihak Berkuasa Negeri, tuan punya tanah atau penduduk mana-mana tanah berimilik.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

Seksyen 389(2) Kanun Tanah Negara (Akta 828) memperuntukkan bahawa hak lalu-lalang persendirian yang diwujudkan atas permohonan oleh Pihak Berkuasa Negeri membenarkan orang-orang yang bertindak berdasarkan kebenaran bertulis atau tersirat daripada Pihak Berkuasa Negeri melakukan yang berikut:

- (a) Untuk berulang alik antara tanah rizab dan perhentian awam;
- (b) Untuk berulang alik antara tanah rizab hutan dan perhentian awam; atau
- (c) Untuk berulang alik antara tanah tertentu dan perhentian awam bagi maksud mengambil bahan batuan daripada tanah itu.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

Seksyen 389(3) Kanun Tanah Negera (Akta 828) memperuntukkan bahawa hak lalu-lalang yang diwujudkan atas permintaan tuan punya tanah bermilik akan membenarkan dilakukan yang berikut:

- (a) Tuan punya tanah itu boleh berulang alik antara tanahnya dan perhentian awam;
- (b) Mana-mana orang yang mendapat persetujuan tuan punya tanah berkenaan boleh berulang alik antara tanah itu dan perhentian awam.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

Seksyen 389(3) Kanun Tanah Negera memperuntukkan bahawa hak lalu-lalang yang diwujudkan atas permohonan penduduk tanah bermilik akan membenarkan dilakukan yang berikut:

- (a) Penduduk tanah itu boleh berulang alik antara tanahnya dan perhentian awam;
- (b) Mana-mana orang yang mendapat persetujuan penduduk tanah berkenaan boleh berulang alik antara tanah itu dan perhentian awam.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

- ❑ Perlu juga diambil perhatian bahawa penggunaan hak lalu-lalang, sama ada diwujudkan atas permohonan oleh Pihak Berkuasa Negeri atau tuan punya atau penduduk tanah berimilik, juga akan tertakluk kepada kandungan perintah Pentadbir Tanah yang dibuat selaras dengan Seksyen 390(4) Kanun Tanah Negara (Akta 828).
- ❑ Contohnya, tuan punya tanah desa menggunakan kenderaan jika arahan itu mengandungi peruntukan yang membolehkannya untuk berbuat demikian.

# Mewujudkan Hak Lalu-Lalang Persendirian Dan Had Kegunaannya

Seksyen 388(2) Kanun Tanah Negara (Akta 828) memperuntukkan bahawa hak-hak yang diberikan dan tanggungjawab-tanggungjawab yang dikenakan berkenaan dengan mana-mana tanah dengan kewujudan hak lalu-lalang Pentadbir Tanah itu akan bersekali dengan tanah dan mengikat tuan punya-tuan punya tanah dan penduduk-penduduk yang ada masa itu.

# Mewujudkan Hak Lalu-Lalang Awam Dan Had Kegunaannya

- ❑ Seksyen 390(2)(b) Kanun Tanah Negara (Akta 828) memperuntukkan bahawa hak lalu-lalang awam diwujudkan oleh Pentadbir Tanah jika ia berpendapat bahawa perlu berbuat demikian.
- ❑ Seperti yang diperuntukkan dalam Seksyen 389(4), hak lalu-lalang awam membenarkan orang ramai untuk berulang alik antara mana-mana kawasan tanah yang ditentukan dan perhentian awam.
- ❑ Kegunaan hak lalu-lalang awam juga tertakluk kepada perintah Pentadbir Tanah yang dibuat selaras dengan Seksyen 390(4) Kanun Tanah Negara (Akta 828).

# Pengukuran Tanah Untuk Hak Lalu-Lalang

Kawasan tanah berimilik yang akan digunakan untuk hak lalu-lalang persendirian atau hak lalu-lalang awam hendaklah diukur [Seksyen 391(1)(a) Kanun Tanah Negara (Akta 828)]. Ini ialah untuk membolehkannya ditunjukkan dalam Dokumen Hakmilik Daftar dan Dokumen Hakmilik Keluaran [Seksyen 391(2)(a)(ii) dan (3)(a) Kanun Tanah Negara (Akta 828)].

# Perkongasian Hak Lalu-Lalang Persendirian

Seperti yang diperuntukkan dalam Seksyen 394 Kanun Tanah Negara (Akta 828), tuan tanah atau penduduk tanah bermilik yang terletak bersempadan dengan tanah yang diwujudkan hak lalu-lalang boleh berkongsi kegunaan hak lalu-lalang itu jika setelah permohonan dibuat olehnya kepada Pentadbir Tanah dalam Borang 28C Kanun Tanah Negara (Akta 828), Pentadbir Tanah mengarahkan bahawa ia berhak untuk berkongsinya. Had berkongsi dan syarat kepada perkongsian itu adalah tertakluk kepada yang terkandung dalam perintah. Seperti yang diperuntukkan dalam Seksyen 394(4) Kanun Tanah Negara (Akta 828), Pentadbir Tanah hendaklah mengambil tindakan yang berkenaan untuk membuat ingatan berhubung dengan perkongsian itu dalam Dokumen Hakmilik Daftar dan Dokumen Hakmilik Keluaran.

# Penamatan Hak Lalu-Lalang

Seksyen 395(1) Kanun Tanah Negara (Akta 828) memperuntukkan bahawa Pentadbir Tanah hendaklah mengadakan siasatan dan memerintahkan hak lalu-lalang ditamatkan jika ia berpendapat bahawa:

- (a) Mana-mana orang telah gagal untuk mematuhi apa-apa syarat mengenai pelaksanaan hak lalu-lalang Pentadbir Tanah oleh orang itu; atau
- (b) Ia tidak lagi mendatangkan faedah bagi hak lalu-lalang untuk diteruskan kewujudannya.

# Penamatan Hak Lalu-Lalang

Seperti yang diperuntukkan dalam Seksyen 395(2) Kanun Tanah Negara (Akta 828), pada masa membuat perintah, Pentadbir Tanah dikehendaki untuk mengambil tindakan supaya ingatan bagi kewujudan hak lalu-lalang dalam Dokumen Hakmilik Daftar dan Dokumen Hakmilik Keluaran dibatalkan.

# Pampasan Bagi Kerosakan yang Dilakukan Dengan Kewujudan Hak Lalu-Lalang

Menurut peruntukan Seksyen 393(1) dan (3) Kanun Tanah Negara (Akta 828), tiada orang akan berhak kepada apa-apa pampasan bagi kerosakan yang dialami disebabkan kewujudan hak lalu-lalang selain daripada kerosakan berkenaan dengan pokok, tanaman atau bangunan.

# Pampasan Bagi Kerosakan yang Dilakukan Dengan Kewujudan Hak Lalu-Lalang

Walau bagaimanapun di Pulau Pinang dan Melaka, mengikut perenggan 5 Jadual Ketiga Akta Kanun Tanah Negara (Hakmilik Pulau Pinang dan Melaka) 1963, peruntukan Kanun Tanah Negara itu menghadkan jumlah pampasan yang boleh dibayar (berkenaan dengan kerosakan yang dilakukan dengan kewujudan hak lalu-lalang) tidak terpakai kepada mana-mana tanah di bawah Geran (Gred Satu). Peruntukan itu juga tidak terpakai kepada mana-mana tanah di bawah hakmilik yang dinyatakan pada perenggan 4 Jadual Ketiga Akta yang sama.

# RIGHT OF WAY UNDER SARAWAK LAND CODE (CAP. 81) 1958

# Right of Way

**34.(1)** All land shall be held subject to an implied right;

(a) that the proprietor or occupier of land adjoining or in the neighbourhood who has no other reasonable means of access from his land to a public road, way, river, creek or foreshore;

(b) that the holder of a licence or permit to take rock material or forest produce who has no other reasonable means of access from a public road, way, river, creek or foreshore to such rock material or forest produce; and

(c) that the holder of a mining lease or prospecting licence who has no other reasonable means of access from a public road, way, river, creek or foreshore to land over which mining or prospecting rights have been granted to him under such lease or licence, shall have a right of way for all reasonable purposes over such land and to pass and repass with or without boats or vehicles.

# Right of Way

(2) If the persons concerned cannot agree among themselves to the location of the path or track which will constitute a right of way, the matter shall be referred to the Superintendent by the person or persons requiring the right of way, and the Superintendent shall have power to decide the matter.

(3) The Superintendent shall have power to declare the terms upon which a right of way shall be granted under this section and may impose such conditions as to formation and maintenance as may be considered necessary. Where the right of way is granted over an existing path or track which has been formed or maintained at the expense of the person over whose land it passes, the Superintendent may require the person to whom the right of way is granted to pay to such other person such reasonable sum as may be assessed by way of compensation.

# Right of Way

(4) In any case where a right of way for the benefit of the proprietors or occupiers of adjoining land has been created under this section, the Superintendent may issue a right of way certificate which shall;

(a) specify the land served by the right of way and the land over which it exists;

(b) have endorsed thereon or refer to a diagram showing the land served by the right of way and the land over which it exists; and

(c) be noted on the appropriate maps and plans in the Land and Survey Office and be registered in the Register in accordance with section 112.

# Right of Way

(5) Compensation for damage, if any, to trees or other property belonging to the person or persons through whose land a right of way is made shall be primarily assessed by mutual agreement between the parties concerned and, in the absence of agreement, the matter shall be referred to the Superintendent and the compensation assessed by him.

(6) Any person aggrieved by any decision of the Superintendent under this section may, within thirty days of being informed of such decision, appeal to the High Court and for the purpose of further appeal any decision of the High Court shall be deemed to be made in a civil proceeding.

# RIGHT OF WAY UNDER SABAH LAND ORDINANCE 1930 (CAP. 68)

# Right of Way

## Specific rights reserved

S30. (1d) the right to resume without payment from any land held under a Provisional Lease or entry in a Field Register a section not exceeding twenty metres in width for the purpose of making a public road, railway, tramway, **right of way**, canal, irrigation channel, aqueduct, watercourse, drain or sewer through the said land in any direction provided always that reasonable compensation shall be paid to any person for any actual damage caused to his property by exercise of such right;

# Right of Way

## Implied conditions in titles

S31. (1d) any owner of alienated land, whether his title be of a date prior or subsequent to the commencement of this Ordinance, may apply to the Collector of the district in which his land is situate for a **right of way** from his land over any other alienated land to the nearest public road or a river or foreshore, or for permission to construct a drain or irrigation channel across such land, and the Collector shall deal with the application in the manner prescribed;

(3) When a **right of way** has been marked out under the powers conferred by section 30 or by this section the Collector shall have power to call for the production to him of any document of title involved and to endorse, or cause to be endorsed, on any such document of title a description and plan of such **right of way**.

**THANK YOU**