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IMPROVING THE COMPULSORY LAND ACQUISITION PROCEDURE: INTERPRETING THE LAND ACQUISITION (AMENDMENT) ACT 2016 (ACT A1517)

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ABSTRACT

The compulsory land acquisition is the process by which the government acquires the private land which needed for any public purpose or for a purpose beneficial to the economic development of Malaysia. The provisions relating to land acquisition are stipulated under the Land Acquisition Act 1960 ("the Acquisition Act"). Some 19 years after the last round of amendments to the Acquisition Act, the Land Acquisition (Amendment) Act 2016 ("the Amendment Act 2016") had been introduced. The Natural Resources and Environment Minister has said that changes to the Acquisition Act are necessary especially for infrastructure development to retain the country's competitiveness in heading towards a developed nation. This paper aims to examine the changes in the Amendment Act 2016 as to summarize the reason for the amendment. The authors using content analysis to identify the changes involved in the Amendment Act 2016. The study reports the reason for the amendment is to explain and improve the implementation procedure in the acquisition of underground land, strata property and temporary occupation or use of land beside to explain and improve the procedure concerning the reference to court by the landlord. In addition, the amendment is to streamline the existing provisions to meets the current requirement. The findings, therefore, can be referred to all the key players in land acquisition procedure and as an initiation to assess the effectiveness of the Amendment Act 2016.

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1. Introduction

In April 2016, the National Land Council (MTN) has agreed to amend and improve the Land Acquisition Act 1960 [Act 486] ("the Acquisition Act") together with the amendment of National Land Code 1965 and the Strata Titles Act 1985 (Bernama, 2016). The last time the Acquisition Act was amended was effective on 1st February 1998 (*Land Acquisition Act (Amendment) 1997 [Act A999]*).

Some 19 years after the last round of amendments to the Acquisition Act, the Land Acquisition (Amendment) Act 2016 [Act A1517] (“*the Amendment Act 2016*”) had been introduced. The Amendment Act 2016 had been gazetted on 9 September 2016 but has yet to come into force (Choo and Kee, 2016). The Amendment Act 2016 aims to rationalize real property laws to address Malaysia’s current needs in land development. However, the effectiveness of this law will depend on the steps undertaken by the relevant authorities to execute the changes, such as the authorities’ response on the application for the extension of the leasehold periods, and the implementation of the alienation of underground land.

Various parties including government agencies, solicitors, valuers as well as academicians currently discussing this matters. All related parties and authorities need to be clearly informed and understand on the amendments made before the Amendment Act 2016 come into force. Until now, none of the research done to explain the items involved in the amendment. Therefore, this paper is done intentionally to study the purpose of Land Acquisition (Amended) Act 2016 [Act A1517] as well as its grounds of changes.

2. Literature Review

The Land Acquisition Act 1960 (Act 486) start effectively on 13 October 1960 to all states in Peninsular Malaysia (Earnest, 2016). Its had through the various amended process to suit with the current needs since its formulation. The acquisition act was passed by the Malayan Parliament in 1960, only three years after our first Prime Minister Tunku Abdul Rahman declared independence for a new nation.

During the intervening 20 years after the acquisition act was passed, not many high-rises and subdivided buildings were built. Provisions in the acquisition act intended for the compulsory acquisition of low-rise landed properties were adequate for the purposes for which they were intended at that time. Thereafter, among the amendment act implemented before, Act A575 come into force on 20 January 1984. The main objective of this act is to solve the late award payment to the landlord which lost their property after acquired by State Authority under land acquisition act (Salleh, 2016). Under the new provision, all the land acquisition process need to accomplished then award must be served to interested parties within a period of 3 years. If Land Administrator failed to do that, the acquisition shall be terminated by the court. Since the 1980s though, many high-rises, both residential and commercial, have been built in the major towns and cities ranging from five-storey flats to the multi-storey Petronas Twin Towers and other skyscrapers in the Kuala Lumpur commercial centre. In the late 1980s, the Dataran Merdeka, with its below-ground commercial spaces and car parking bays was built and completed in time to welcome Queen Elizabeth II of Great Britain during the Commonwealth Heads of Government Meeting in 1989.

Subsequently, on 1 February 1998, the Acquisition Act had been amended. The Act A999 come into force objectively is to establish the new land acquisition procedure under section 3(1) (b) and (c) where the purpose of acquisition for mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purpose (Salleh, 2016).

As then until now, many underground structures, notably the railway tracks and stations of the fast expanding LRT networks in the Klang Valley, have been built. It is clear that provisions in the outdated Land Acquisition Act 1960 are proving to be inadequate for the present day needs of acquiring authorities and affected property owners. Issues of underground land acquisition and

compensation were widely discussed when building owners in Jalan Sultan in the city centre protested against the construction of the Mass Rapid Transit (MRT) underground line in their area (*Chen, 2016*). The acquisition act currently does not have specific provisions on subdivided buildings and underground land, which pose difficulties for MRT Corp to acquire the underground land.

There is now before Parliament a bill to amend some provisions in the Acquisition Act. Some amendments are minor and even cosmetic in nature, but others are intended to address the many inadequacies of the Acquisition Act. This amendment act 2016 is to make sure the land acquisition procedure will be implemented with more organize and optimum align with the current needs and changes. The amendment also to consider the interest of the landlord and parties interested which involved. The proposed amendments to the acts were expected to help the government improve land management services efficiently and facilitate land acquisition involving strata development and underground soil development (*Wan Junaidi, 2016; Ho, 2016; Abu, 2017*). Strata and underground development are primarily driven by the relative scarcity of suitable land in the city. According to Sinnappah (2018), the amendments aim to improve land acquisition procedures in Malaysia due to the scarcity of suitable land for underground development such as the Mass Rapid Transit (MRT), High Speed Rail (HSR) and Bandar Malaysia projects. The Natural Resources and Environment Minister has said that changes to the Acquisition Act are necessary especially for infrastructure development to retain the country's competitiveness in heading towards a developed nation.

3. The Land Acquisition (Amendment) Act 2016

The National Land Council (MTN) has agreed to amend and improve the Land Acquisition Act 1960 in April 2016. To examine the changes in the Amendment Act 2016 as well as to identify the reason for the amendment, secondary data from the act had been examined qualitatively. The study therefore, use content analysis to identify all the amended items in the Amendment Act 2016. Altogether there are 20 items in the Acquisition Act had been amended. Table 3.1 shows the details.

Table 3.1 : Amended Items in Land Acquisition Procedure as Stated in Land Acquisition (Amendment) Act 2016.

Amended Items	Explanation
Section 2 – Definition of Lot and Schedule Land	Introduce the definition of “lot” for the purpose to explain and improve the implementation procedure of land acquisition. The definition of “lot” also including “interim identification number” given by land office. Amend the definition of “schedule land” for the purpose to facilitate the implementation of acquisition for subdividing or strata building. The words “including parcel or provisional block” had been inserted to explain that schedule land also included them.
Section 3 – The Preliminary Valuation Report From Private Valuer	Allow the preliminary valuation report by private valuer submitted during application. However, private valuer who prepared the preliminary valuation report not allowed preparing any valuation report to determine the amount of compensation for any person interested later.
Section 3C – Replacement One of the Members in Land Acquisition Special Committee	Replacement one of the members of Land Acquisition Special Committee for Federal Territory Kuala Lumpur due to the position “Federal Territory Development and Klang Valley Planning Division” has been repealed. The words “a representative from the Ministry or agency responsible for the Federal Territory” had been replaced. This amendment introduces general position to ease the implementation if one ministry or agency for federal territory structured again.

Section 3F – Organize Withdrawal of Application for Land Acquisition	Organize procedure withdrawal of application for land acquisition which allows the Land Administrator to seize the deposit and no requirement for Land Administrator to do enquiry and determine award due to a declaration under section 8 is not been published.
Section 7 – The Requirement of Plan to Describe the Area and Depth of Underground Land	Introduce new subsection 7(2) which allocate requirement of a plan to describe the area and depth of underground land. It shows the balance of land from surface land will remain its ownership by the landlord to the extent stated in the express condition and beyond that is own by the Government.
Section 9, 22, 23, 26 & 66 – Improving the Implementation of Strata Land Acquisition	Allocation in these sections is to improve the implementation of strata land acquisition. Section 9(2) amended to allow notes on the acquisition of strata property in strata register. Section 22(3) amended to require Land Administrator to serve a notice or related documents to related bodies including the Management Corporation. Section 23(a) and 66 explain that the acquisition of strata parcel will be vested to the statutory body. Section 26 is to allowed authority body to do further action on strata register book as provision in the Strata Titles Act 1985.
Section 9A – Shortens The Duration to Required Information on Land	The amendment done to shortens the time frame to require the information on land from local planning authority body without through Director of Town and Country Planning.
Section 12 & 14 –Land Administrator to Record All Evidence during Enquiry.	The amendment of section 12 is to assign Land Administrator to record all evidence during enquiry session. Section 14(1) is to cut off the word “imposed by the valuer” and valuation fee will be made in line with the acquisition as prescribe by rules.
Section 19A – The Enquiry and Award by Land Administrator Pursuant to Certificate of Urgency	Introducing the new section 19A to explain that enquiry and award shall continue to make even certificate of urgency under Form I and Form K had been issued. All the proceeding related to the acquisition shall applicable even award has not been made within two years as prescribed in subsection 8(4).
Section 28 – The Difference on Acquired Land Area After Survey	The amendment is to introduce new provision to explain when a difference between land area that acquired after survey with land area that gazette, new declaration and published shouldn’t require doing, provided that the difference not more than one quarter of a hectare or one per centum of the area of scheduled land as published in the Gazette under subsection 8(1), whichever is the greater.
Section 29A, 32 & 48 – Reduction of Late Charges Rate	This part is to reduce late charges rate from 8% per year as the existing provision to 5% per year. This is aligned with the current rate as being used in Court.
Section 32A & 35 – The Practice of Payment on Land Acquisition Award	Section 32A amended to describe the practice of payment on land acquisition award in line with the technology growth currently. Section 35 is to streamline the procedure for withdrawal from the acquisition. If the withdrawal is done before formal ownership, gazette on withdrawal need to be carried out.
Section 37 – Increase the Award Limit	This section amended to increase award limit of any interest in schedule land for appeal to the court to RM5,000. This is also to allowed acquiring body or person interested of schedule land to make an objection to Court with the limit increase up to RM30,000.
Section 40B – Advisor in Court	There is a need for regulation to appoint advisor from public valuer and private valuer to attend in court. Section 40B allows the public valuer to receive fees as decided by Court under subsection (5) of this section.

Section 57 – Temporary Occupation or Use of Land	This section relates to temporary occupation or use of land. This provision has been wider and the requirements to make a note on occupation and use of that temporary land into ownership title or other related documents.
Section 58 – Award Determination by Land Administrator	Referring the amendment to section 57, section 58 amended to insert the provision regarding award determination from Land Administrator which may obtain a written opinion from valuer to enter into any valuation for the purpose to replace the award in form of finance, record the valuation and all evidence during an enquiry.
Section 59 & 60 – Enquiry by Land Administrator After Term of Temporary Occupation and Use of Land Cease.	Section 59 was amended to allow the enquiry made by Land Administrator to determine award after term temporary occupation and use of land cease. Section 60 amended to allow any objection from interested parties which not agreed with the award received and make the objection to Court.
Section 35 & Part VII – Withdrawal of Land Acquisition under Section 35 and Temporary Occupation and Used of Land under Part VII	Align with amendment of withdrawal from acquisition and temporary occupation and use of land, section 29, 29A, 31, 32, 35, 36, 37, 38, 49, 51, 53, 55 and 65 amended hence all the sections will be also used for the purpose of withdrawal under section 35 and temporary occupation and use of land under Part VII under this Act.
Section 69 – Allowing Rules under this Act	The amendment is to allow the rules done regarding any matters under this Act which included any forms, fee or deposit. This including the new valuation fee as in subsection 14(5). Besides, it's to give power to Minister for made rule under the second schedule in electronic form.
First Schedule – Consideration of Section 214A of National Land Code 1965.	The amendment is to coordinate and consider the needs of section 214A National Land Code in valuing market value of estate land. This is to avoid court decision which allowed no approval from Estate Land Board when estate land transacted to individual land. This is to clarify that when land acquisition involves estate land, valuation of land needs to consider also an estate land.

Source: Land Acquisition (Amendment) Act 2016

The 20 items amended involve the changes in the provision of existing 26 sections, part VII and First Schedule under the Land Acquisition Act 1960. There is also 1 new section come into force after the amendment.

4. Results and Discussion

All 20 items amended in the Amendment Act 2016 involves 27 section (include 1 new section), part VII and also First Schedule of Land Acquisition Act 1960 (amended). The author compared and differentiate all the items involve prior to the Amendment Act 2016 with current amended. Details on the discussion shown in Table 4.1 below.

Table 4.1: The Comparison on the Amended Items Prior and After the Land Acquisition (Amended) Act 2016

Amended Items	PRIOR the Land Acquisition (Amended) Act 2016	AFTER the Land Acquisition (Amended) Act 2016
Section 2 – Definition of Lot and Schedule Land	No definition for “lot”.	Introduce the definition for “lot”.
	Definition of “schedule land” not include subdivide or strata building.	Definition of “schedule land” had include subdivide or strata building.
Section 3 – The Preliminary Valuation Report From Private Valuer	The preliminary valuation report only submitted by public valuer.	The preliminary report can be submitted by public and private valuers.
Section 3C – Replacement One of the Members in Land Acquisition Special Committee	The members in Land Acquisition Special Committee include Federal Territory Development and Klang Valley Planning Division.	The members in Land Acquisition Special Committee exclude Federal Territory Development and Klang Valley Planning Division and replaced by a representative from the Ministry or agency responsible for the Federal Territory.
Section 3F – Organize Withdrawal of Application for Land Acquisition	Where the applicant withdraws from any acquisition, Land Administrator shall conduct an enquiry to determine the amount of deposit to be forfeited.	Where the applicant withdraws from any acquisition, Land Administrator can take back the deposit then enquiry and award shall not be commence.
Section 7 – The Requirement of Plan to Describe The Area and Depth of Underground Land	No subsection 7(2)	Introduce subsection 7(2) which allocate requirement of a plan to describe the area and depth of underground land.
Section 9, 22, 23, 26 & 66 – Improving the Implementation of Strata Land Acquisition	Section 9(2) not stated notes on acquisition of strata property in strata register. Section 22(3) requires Land Administrator to serve a notice or related documents to related bodies not including the Management Corporation. Section 23(a) and 66 not explain that the acquisition of strata parcel will vested to statutory body. Section 26 not stated that authority body to do further action on strata register book as provision in Strata Titles Act 1985.	Section 9(2) amended to allow notes on acquisition of strata property in strata register. Section 22(3) amended to require Land Administrator to serve a notice or related documents to related bodies including the Management Corporation. Section 23(a) and 66 explain that the acquisition of strata parcel will vested to statutory body. Section 26 is to allowed authority body to do further action on strata register book as provision in Strata Titles Act 1985.
Section 9A – Shortens The Duration to Required Information on Land	To require the information on land from local planning authority body must through Director of Town and Country Planning.	To require the information on land from local planning authority body without through Director of Town and Country Planning.
Section 12 & 14 –Land Administrator to Record All Evidence during Enquiry.	Section 12 not assigns Land Administrator to record all evidence during enquiry session.	Section 12 is to assign Land Administrator to record all evidence during enquiry session.
	Section 14(1) has the word “imposed by the valuer”.	Section 14(1) is to cut off the word “imposed by the valuer” and valuation fee will be made in line with acquisition as prescribe by rules.

Section 19A – The Enquiry and Award by Land Administrator Pursuant to Certificate of urgency	No section 19A	Introducing the new section 19A to explain that enquiry and award shall continue to make even certificate of urgency under Form I and Form K had been issued.
Section 28 – The Difference on Acquired Land Area After Survey	No provision to explain on the action to do when a difference between land areas that acquired after survey with land area that gazette.	Introduce new provision to explain when a difference between land area that acquired after survey with land area that gazette, new declaration and published shouldn't require to do, provided that the difference not more than one quarter of a hectare or one per centum of the area of scheduled land as published in the <i>Gazette</i> under subsection 8(1), whichever is the greater.
Section 29A, 32 & 48 – Reduction of Late Charges Rate	Late charges rate is 8% per year.	Late charges rate is reduced to 5% per year.
Section 32A & 35 – The Practice of Payment on Land Acquisition Award	Section 32A describes the practice of payment on land acquisition award only in form of cheque, money order or cash. Section 35 not describe when the withdrawal done before formal ownership, all proceeding shall cease to have effect.	Section 32A describe the practice of payment on land acquisition award can be transmitted electronically. Section 35 stated when withdrawal done before formal ownership, gazette on withdrawal need to be carried out and all proceeding shall cease to have effect.
Section 37 – Increase the Award Limit	Award limit for appeal to court is RM3,000 and acquiring body can make objection to Court with the limit of RM15,000.	Award limit for appeal to court increase to RM5,000 and acquiring body can make objection to Court with the limit increase up to RM30,000.
Section 40B – Advisor in Court	No regulation to appoint advisor from public valuer and private valuer to attend in court.	There is a need for regulation to appoint advisor from public valuer and private valuer to attend in court.
Section 57 – Temporary Occupation or Use of Land	No provision to make a note on any temporary occupation or use of land.	This provision has been wider and the requirements to make a note on occupation and use of that temporary land into ownership title or other related documents.
Section 58 – Award Determination by Land Administrator	No provision regarding award determination from Land Administrator which may obtain a written opinion from valuer to enter into any valuation.	Include the provision regarding award determination from Land Administrator which may obtain a written opinion from valuer to enter into any valuation.
Section 59 & 60 – Enquiry by Land Administrator After Term of Temporary Occupation and Use of Land Cease.	Section 59 not stated any enquiry made by Land Administrator to determine award after term temporary occupation and use of land cease. Section 60 stated where the Land Administrator not agreed with interested parties on the award received and make objection to Court.	Section 59 allowed enquiry made by Land Administrator to determine award after term temporary occupation and use of land cease. Section 60 allowed any objection from interested parties which not agreed with award received and make objection to Court.

Section 35 & Part VII – Withdrawal of Land Acquisition under Section 35 and Temporary Occupation and Used of Land under Part VII	Section 29, 29A, 31, 32, 35, 36, 37, 38, 49, 51, 53, 55 and 65 not aligned with new provision as in Section 35 and Part VII.	Section 29, 29A, 31, 32, 35, 36, 37, 38, 49, 51, 53, 55 and 65 amended hence all the sections will be also used for the purpose of withdrawal under section 35 and temporary occupation and use of land under Part VII under this Act.
Section 69 – Allowing Rules under this Act	Not describe on the rules done regarding any matters under this Act which included any forms, fee or deposit.	Allow the rules done regarding any matters under this Act which included any forms, fee or deposit.
First Schedule – Consideration of Section 214A of National Land Code 1965.	Not coordinate and consider the needs of section 214A National Land Code in valuing market value of estate land.	Coordinate and consider the needs of section 214A National Land Code in valuing market value of estate land.

From table 4.1, it can summarize that the amended items are to explain and improve the implementation procedure in the acquisition of underground land, strata property and temporary occupation or use of land. Prior to the Amendment Act 2016, this item was not included in the Acquisition Act. As well, the Amendment Act 2016 explain and improve the procedure concerning the reference to court by the landlord. This includes the limit allowed for appeal to the court which had increased to RM30,000. In addition, the amendment is to streamline the existing provisions to meets the current requirement. The items amended are to suit the current needs where the practice of payment on land acquisition award must in line with the technology growth.

5. Conclusion

Prior to the Amendment Act 2016, the laws only expressly addressed compulsory acquisition of land on the earth's surface. The Amendment Act 2016 expands the ambit of the law to include compulsory acquisition of sub-divided buildings (parcels or provisional blocks) and underground land. The amendments done is to appraise the land acquisition procedure, to ease the interested parties to filing the objection to court and to make sure the right of interested parties preserved. The process also involving all the stakeholders, ministry and government agency, non-government body, academicians and also public.

However, some of the amendment had leads a direct impact to the landlord when the late payment charges had been changed. Under section 32 of the Amendment Act 2016, the charge imposed of 8% per year had been reduced to 5% per year until the total amount had been completely paid. The reduction may lessen the government cost but not the landlord. Moreover, under section 37 of the Amendment Act 2016 which discuss on the objection of compensation amount, where the person interested which may not agree with the amount can refer to court for the higher compensation. The amount of compensation given by Land Administrator allowed to bring in court must be more than RM30,000 where the previous provision only needs more than RM15,000. This shows that the landlord has not allowed going in court for objection if the compensation amount received less than RM30,000.

Consequently, even there still an issue on the Amendment Act 2016, this amendment suggestive to one goal to make sure citizens can get the benefit from public infrastructure projects

which intentionally developed for public and government interest. Further research need to be done to see the effectiveness on the implementation of this new Amendment Act 2016 concentrating on the interest of all parties involved especially land and public as well.

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