

Land for indigenous people: ownership conflicts and government interventions in kampung Bawong, Perak, Malaysia

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Abstract. Land ownership among the indigenous is lagging despite their special stature and origins in the country. Their nomadic way of life and settlements in the reserved lands for indigenous are among the key factors which hinder their path towards land ownership. In 2005, government initiates to alienate 50 land parcels with house for the villagers of Kampung Bawong, Sungai Siput, Perak. However, current status reported that only 21 landowners still live on site while the rest are abandoned. In view of this, the present study examines the current issues on property rights and how government is responsible in managing the conflicts. The data was collected from interviews and questionnaires. The study analysed several issues on property rights including idle land, tax arrears, and inheritance property. The study found that government also plays its role in managing the conflicts. Hence, in ensuring a way forward for the ingenious people to continue to own their lands in legal, the government might explore the best practice of land alienation for them which include the aspects of legal and financial resources.

1. Introduction

Land is an important part of life and remains quintessential for social and justice. A lack of security of land tenure means a lack of security in the future's economy [1][2][3]. There are three ways to ownership i.e. over and done with dealings, inheritance, and by acquiring it through alienation from the authority. The alienation of land constitutes an important element in the procedure, process, and governance. In West Malaysia, it is governed by the National Land Code (NLC) 1965 while the states situated in East Malaysia (Sabah and Sarawak) are governed by their respective land laws. The state authority in Malaysia has an absolute power in the alienation of lands as prescribed in the Federal Constitution 1957 [4] and the NLC 1965 [5]. Section 5 of the NLC 1965 clearly defines the discretionary power of state authority to alienate the state land. After all, Section 42 deals with the power of disposal while Section 43 describes the persons and bodies to whom alienation can be done. Section 76 explains the meaning of alienation and the authority may alienate lands under the circumstances provided under the provision [5].

State authority may alienate state land to anyone who stated under Section 43 of the NLC 1965 and subjects to certain restrictive conditions. Accordingly, Indigenous People also have the right to be landowner by disposal through land alienation. Therefore, since the mid-1970s, the government introduced the regroupment schemes for Indigenous People as a major program to encourage them live near to other communities [6]. By this program, the government aims to eradicate poverty, to modernize their way of life through the provision of social services and basic facilities, and to reorganize them in suitable centres in their traditional areas [7]. Through this, as at 2014, a total 1,536.38 hectares of state land in Peninsular Malaysia was alienated to the Indigenous People for the purpose of regroupment



schemes. However, there are some scheme where participants began to withdraw as a result of conflicts over land. Therefore, this study examines the current issues on ownership and how government is responsible in managing the land conflicts.

Land ownership is the granting of land by the state authority to individuals or bodies. There are two ways of land ownership i.e. the disposal through land alienation by granting freehold and leasehold land ownership [5]. Meanwhile, disposals other than land alienation are granting the land reserves, temporary occupation license, to extract and remove rock material permit, and use of air space permit [5].

Referring to section 43 National Land Code 1965, there is a provision on parties entitled to receive land ownership by land disposing through land alienation which are: (1) Natural persons other than minors; (2) Corporations having power under their constitutions to hold land; (3) Sovereigns, governments, organizations and other persons authorised to hold land under the provisions of the Diplomatic and Consular Privileges Ordinance, 1957; and (4) Bodies expressly empowered to hold land under any other written law.

According the provision, the Indigenous People also have the right to own the land by way of alienation. The indigenous of Peninsular Malaysia are collectively known as Orang Asli. There are a total of 18 Orang Asli subgroups which represent around 13.8% of the national population in Malaysia. The indigenous are commonly perceived as people without a clear system land tenure and rights and it is difficult to grant a land to them [1]. The majority of the Malaysian indigenous still live in remote areas, although more and more now live in the periphery of the urban areas [8]. However, the government still grants almost 15 hectares of land to the Indigenous People despite many issues occurred.

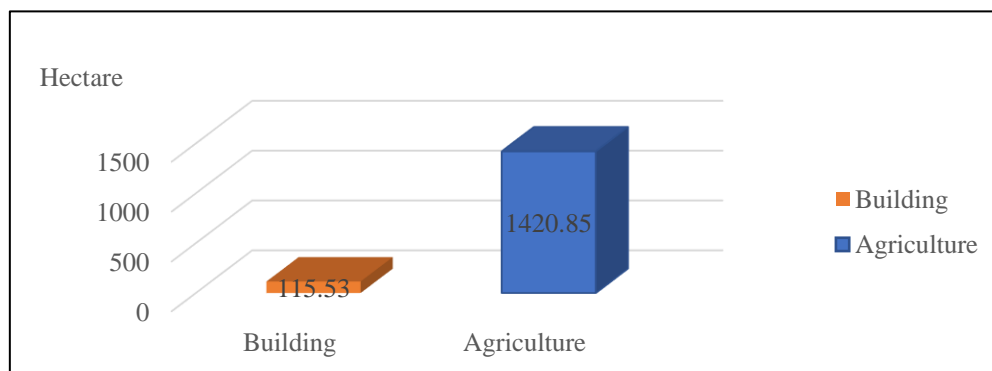


Figure 1 Land ownership for Indigenous People in Peninsular Malaysia by category

Figure 1 shows that most state governments have approved a land area of 1,420.85 hectares or 92.48% of the total land by issuing individual title for agriculture purpose against a land area of 115.53 hectares or 7.52% of the total land issued by individuals for housing or residential purposes. This proves that every state considers the Indigenous People to own land by alienation [7][9]. Most states issue individual titles on the condition that the land is agricultural rather than a document of title for housing or residential purposes. This is because most state government and federal government have provided housing assistance on the aboriginal land reserves and have encouraged the communities to generate income and support themselves and families through the agricultural sector such as palm oil, rubber, cocoa, banana, among others by granting the individual titles to those who are truly capable and have the capability to change their lives. Figure 1 shows the total number of eight states that issue individual title for residential and agriculture purposes.

The roles of the Department of Orang Asli Development (JAKOA) and Land Office are to provide information and disclosures to these registered owners in discharging their responsibilities after having their own title. The responsibility herein is to pay the land tax as stated in the title document. However, Section 8 of the Aboriginal Act 1954 (Act 134) clarifies the following [10]:

- “8. (1) The State Authority may grant the right to occupy any land that is not a land vested or leased land for any purpose within any Aboriginal area or Aboriginal reserve.
 (2) The right to occupy may be granted—
 (a) to—
 (i) any indigenous individual;
 (ii) any member of any Aboriginal family; or
 (iii) any member of any Aboriginal community;
 (b) without having to pay rent or subjected to any rent which may be imposed on the grant; and
 (c) is subjected to such conditions as may be imposed on the grant and shall be deemed to not grant to any person any title better than the title of a tenant at will.
 (3) Nothing in this section shall prevent the granting of the title, grant or lease of any land to any Indigenous People.

Based on Act 134, there is a conflict between the National Land Code 1965 which states that it is the responsibility of the registered owner to pay the rent tax once the land has been disposed to the individual or a body. However, the Act provides that the disposal of government land on the reserve of indigenous peoples is without the payment of rent or subjected to any rent that may be imposed on the grant.

There are three land disposal methods proposed in Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan No. 6/1999 [11] i.e. development under Land Act (Group Settlement Areas) 1960, the individual ownership and remain as federal reserve or the second method is the individual ownership subjected to the purpose of ownership whether the Indigenous People present to the Land Office, or through a minute draw of MMK that has been decided by the state authority. Figure 2 shows the flow chart of land application procedure to the Land Office.

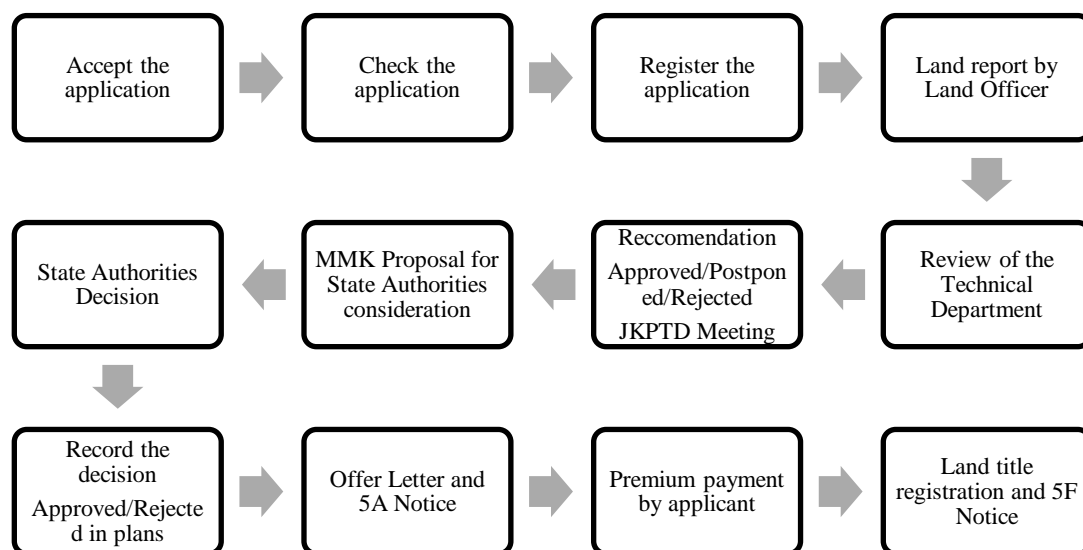


Figure 2 Land alienation procedure

The National Land Code 1965 provides the protection of ownership over a land. When the state authority approves the application, the land will be alienated and a land title will be issued to the applicant. Usually the state government will issue a leasehold title for 60 years or 99 years with or without an express condition in the title. Before a title is issued, the applicant must pay a premium to the state authority. Land ownership carries with it certain duties including paying the annual quit rent and complying with all the express and implied conditions affecting the land [12][13].

As an alternative, the disclosure and dissemination of information on the responsibilities and roles as a registered owner should be conveyed and should determine the level of ability of Indigenous People

other than developing their own land or paying their land taxes so that the community does not rely solely on federal or state government assistance [14][15]. However, the goodwill of the government should be refined by the agencies or departments involved after the individual title is given to the Indigenous People who have been assigned with the responsibilities that they must perform after being named as a registered owner [16]. The agency involved needs to see the level of readiness and most importantly is the level of understanding in educating and delivering about their responsibilities as a registered owner. It is very important for registered owners to be aware and understand their responsibilities [17][18].

2. Methods

The study which employed in-depth interviews is aimed at understanding the process and conflicts in land ownership among the Indigenous People in a regroupment programme at Kampung Bawong, Sungai Siput, Perak. The results of the study were obtained through interviews with people with knowledge concerning land issues among the Indigenous People of in the case study area. The purpose of interviewing these key informants was to collect information who have first-hand knowledge about land ownership process and other related conflicts. In order to enable interpretation and explanation in relation to the conflict to be examined well, hence, the study's framework was developed to discuss the issues leading to the land ownership conflict among the Indigenous People.

3. Result and Discussion

The study found that several issues regarding property rights including idle land, tax arrears, and inheritance property. Government also plays its role in managing the conflicts such as to replace the abandoned house and reduce the tax. The state of Perak also issues individual land titles for residential purposes to 85 Indigenous People in Kampung Bawong for them to own property and have a permanent residence. The Department of the Director General of Federal Land and Mines (JKPTG) issues the Federal Director General of Land and Mines Circular No. 6/1999 on Methods and Approaches to Land Disposal to Indigenous Peoples (reviewed 2007). The circular is intended to advise Land Administrators on land ownership the methods and approaches for the indigenous areas and reserves.

3.1 Land Alienation Process

The processing of land applications by the Indigenous People in Kampung Bawong is not same as the usual application because the Sungai Siput Land Office has received a meeting minute of MMK to release 50 titles to 85 Indigenous People in Kampung Bawong based on the decision dated July 1998. The state government sees this policy as important and the Indigenous Peoples should own their property clearly by having a title document on their own name. The Land Office should not hesitate to register the title documents after receiving a directive information from state government based on the MMK's meeting minutes to ensure that the Indigenous People are not excluded from owning their own property. Figure 2 shows the flow chart of the granting of government land to 50 Indigenous People in Kampung Bawong based on a minute draw of MMK that has been decided by the state authority.

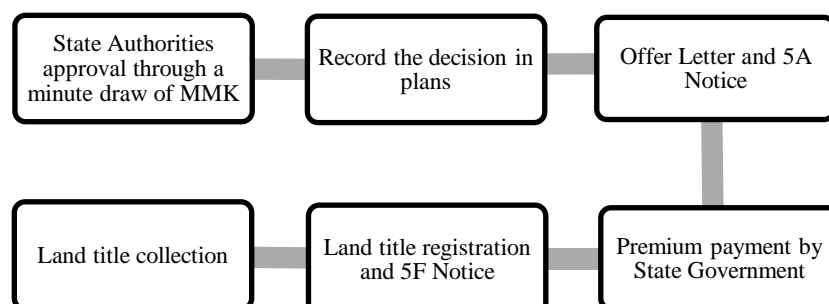


Figure 3 Land alienation process for Indigenous People in Kampung Bawong, Sungai Siput

State authority may alienate land to each family who is entitled to 2.5 hectares of land, consisting of 2 hectares of agricultural land, 0.4 hectares of market orchard land, and 0.1 hectares of housing plot. Table 1.1 illustrates the main focus of this study which is Perak that has issued about 50 acres of individual land for housing or residential purposes and almost 123 hectares will be registered and issued for agricultural purposes involving the communities in Kampung Bawong itself.

3.2 Land ownership conflicts

The Government Meeting Council has approved 85 Indigenous People in Kampung Bawong, Sungai Siput by issuing 50 titles for residential purposes. Figure 3.2 shows that out of 50 registered titles, there are 35 titles owned by 2 registered owners with shares respectively $\frac{1}{2}$ parts while 15 other titles are registered in the name of one owner that own all shares. It is clear that in order to be issued and registered as a registered owner, an owner holds full ownership, responsibility, and should be aware of the division of the shares when owning the land title issued by the Sungai Siput Land Office.

3.2.1 The failure to pay land premium

The land acquisition process requires the applicant to pay land premium upon Notice 5A. Therefore, all chosen applicants need to pay the land premium within the specified timeframe [19]. For the case of Kampong Bawong, the offer letter and Notice 5A have been issued to all the applicants and they were required to pay land premium of RM500.00 within three months from the date of notice. However, the results show that all the applicants failed to pay land premium for issuance of title deeds purposes. The respondent informed that the period of land premium payment will be extended upon the discretion and results of discussions with JAKOA and the applicant's representatives. The extension period is to provide the parties involved to assist the applicants in obtaining financial resources due to the inability to settle the payment.

3.2.2 The houses are abandoned or unoccupied

In accordance of Section 52 of the National Land Code, the registered owners are responsible to develop land in accordance with the expressed or implied condition for residential purposes within 2 years and agriculture purposes within 3 years from the date of the ownership. Failure to comply with such legal requirements may result in forfeiture and land returns to the state authority. From the information obtained referring to the case in Kampung Bawong, there are only 46 of land ownerships that have been granted out of the 50 offered lots. The other 4 lots were not granted because the submission of Notice 5A could not be completed due to the applicants could not be identified. Furthermore, from the total of 46 land ownerships, only 21 owners are still active and live on the residential lot. The rest are found unidentified, deceased, or have moved to another place, causing their houses to be left vacant and partially destroyed because of no occupants.

3.2.3 Land tax arrears

All landowners are required to clear the land tax every year before June 30 [19]. According to the tax payment details, it was found that all of the owners have a record of tax arrears. Table 1 shows the summary of information for the land tax arrears of the 46 land ownerships that have been issued.

Table 1 Land tax arrears of Kampung Bawong

Arrears Period	Total of Land Ownerships	Total Tax Arrears
13 years	4	RM 2,321
10-12 years	12	RM 5,432
7-9 years	14	RM 6,723
4-6 years	7	RM 4,344
1-3 years	4	RM 3,567
No arrears	5	-

From the record, it was found that certain landowners have never paid the land tax since the year first of ownership. According to the NLC 1965, the failure to pay the tax could result in the land being seized. In addition, Section 95 of the same Act stipulates that each registered owner or representative on his behalf is liable to settle land taxes.

3.3 Government interventions towards land ownership conflicts

The government's intention to provide the best for the Indigenous People will still be carried out along with the commitment of various parties. In resolving the conflicts of Indigenous People's land ownership, the government has taken various initiatives to ensure that the granting of land ownership to them is continuous. The actions taken involved to solve problems related to paying land premium, replacing unoccupied houses, reducing land tax, and delivering information.

3.3.1 The payment of land premium

The problem of failure to pay land premium by applicants has been brought to the state government's attention for further consideration. The outcomes of the discussion allow the Office of Perak's Chief Minister to help paying the land premium for each lot. It helps the applicants to settle the land premium and solve the problem of failure to obtain the title. The background of applicants who does not have fixed income and depend on forest sources does not allow them to pay a fixed amount of land premium.

3.3.2 Abandoned house replacement

The Tok Batin of Kampung Bawong have allowed their people to occupy the abandoned houses to prevent the houses being abandoned permanently. It also gives a chance to newly married couples to own a home even if they are not landowners. So far, there are no claims from the landowners to the occupants who stay in the abandoned houses. However, they are required to keep the house well-furnished.

3.3.3 Minimize land tax rate

The problem of the arrears of land tax faced by the villagers is resolved by repealing the previous arrears and imposing a more affordable new land tax rate. The government has proposed to impose a nominal tax payment of RM10 per lot. This rate is in line with the financial factors and affordability of the landowners. Villagers are still unable to pay the land tax at the regular rates due to lack of a fixed source of income.

3.3.4 Community engagement

To ensure that landowners carry out their responsibilities, from time to time, the government will engage with Tok Batin and active landowners in every planning. A series of briefings are also held to ensure that all landowners understand the responsibility of maintaining the land and paying the land tax. The Land and District Office of Sungai Siput regularly holds the briefings about the importance of land ownership and the need to pay land tax. The land tax collection counters are held once a year at Kampung Bawong to facilitate the landowners to pay land tax. In addition, JAKOA also serves as the mediator to discuss the conflicts in matters related to land ownership.

4. Conclusion

Most Indigenous People still maintain a close physical, cultural, and spiritual relationship with the environment. Increasingly, they have also begun to see the ownership of their traditional lands as an essential prerequisite for their material and economic progress. Hence, in ensuring a way forward for the ingenious people to continue to own their lands in legal, the government might explore best practice of land alienation for them which include the aspects of legal and financial resources.

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