



Land Acquisition in Peninsular Malaysia: Empirical Study on Striking the Right Balance Between Public and Private Interests

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Abstract. The right to own property is an intrinsic human right that grants ownership and enjoyment to owners. For land, the ownership right is not absolute but subject to the state authority's acquisition. The land acquisition regime ostensibly requires balancing two competing interests: public and private. In theory, the law states the public side clearly but keeps the non-public side almost invisible. This study examined stakeholders' perspectives, particularly the affected individuals, to determine the balance of rights between public and private interests in Malaysian land acquisition. The study used a questionnaire survey to collect data and descriptive analysis to present the results. The outcome demonstrated that whenever the state exercises the power of land acquisition, the acquisition tends to favour the public interest over private interests, both in law and practice. The study also presents its conclusion and recommendations for Malaysia based on Australia's best practices.

Keywords: Land Acquisition, Balance between public and private interests, Procedures and Compensation

1 Introduction

A piece of land is a vital property that gives people a sense of belonging and security. The land is also considered a critical resource for economic and social survival, particularly in developing countries. The significant value attached to it has led private property rights towards individuals' property ownership and the right to peaceful enjoyment of land to be two of the most fundamental rights recognized by international treaties.

In many jurisdictions, however, it is firmly established that the state may acquire any land including privately owned land to meet national and public needs. Without land acquisition, a country would struggle to establish public infrastructure. Properly conducted land acquisition can be one of the most successful ways to bring together various interests in the land.

However, land acquisition is a time-consuming process involving various concerns, including the process of acquiring the land, the payment of just compensation, etcetera. This process always requires balancing the state's competing interests of representing the general public against private owners. Nevertheless, a study by Ghimire et al. (2017) [1] revealed that many countries, especially developing nations, are facing common problems and difficulties in balancing public and private interests due to the lack of

legal protection and traditional top-down approach by the state government in land acquisition practice, which has resulted in land conflicts between the state and affected persons.

This empirical study examined how Malaysian land acquisition law, defined in the Land Acquisition Act 1960, strives to balance competing interests in law and practice. The study aims to determine how land acquisition in Malaysia should strike the right balance. The subsequent sections discuss the research background, methodology, and results, comparing Malaysian and Australian laws and practices. The final section concludes the study and recommends the best practices for Malaysian adoption.

2 Research Background

In Malaysia, the government has embarked on various infrastructure projects, such as the PLUS highway to Kuala Lumpur International Airport (KLIA), the extension of the Light Rail Transit (LRT), and most recently, the Mass Rapid Transit Line Railway Project (MRT). The projects are for the public's welfare and benefit [2]. Large-scale projects demand gigantic building sites in most urban and rural areas, necessitating the substantial acquisition of private land [2]. A state government, for example, has expropriated 253 commercial units from Ampang Park Shopping Centre for MRT Project 2 [3] and acquired 406 lots of privately owned land for MRT Project 1 [4]. In 2013, the development of the Pengerang Integrated Petroleum Complex acquired 1.157 plots (6.603 acres) of land and affected 5,425 people from 1,085 families [5].

Tables 1 and 2 indicate the total number of land acquisition cases (3,834) filed in the High Court of Peninsular Malaysia between 2015 and February 2020. Table 1 shows an increasing trend of land acquisitions for all states within the timeframe, while Table 2 captures Selangor as having the highest number of land acquisitions, with 1,274 cases.

Table 1: Number of land acquisition cases filed in the High Court of Peninsular Malaysia between 2015 and February 2020

Year	Number of Cases
2015	623
2016	786
2017	916
2018	791
2019	633
Feb 2020	85
TOTAL	3,834

(Source: Office of the Registrar, Federal Court of Malaysia)

Table 2: Number of land acquisition cases filed in the High Courts of Peninsular Malaysia from 2015 to February 2020 according to the states

Number of land acquisition cases in each state in Peninsular Malaysia						
Year	Perlis	Kedah	Pulau Pinang	Perak	Selangor	Kuala Lumpur
2015	23	0	3	16	120	3
2016	10	0	57	90	276	26
2017	7	1	69	78	255	49
2018	4	6	94	43	384	46
2019	0	103	40	4	233	44
Feb 2020	0	6	5	9	6	3
TOTAL	44	116	268	240	1,274	171

Number of land acquisition cases in each state in Peninsular Malaysia						
Year	Negeri Sembilan	Melaka	Johor	Pahang	Terengganu	Kelantan
2015	75	22	162	35	73	91
2016	11	52	77	8	133	46
2017	2	80	195	33	113	34
2018	12	67	77	7	33	18
2019	17	25	52	19	60	36
Feb 2020	0	11	17	0	22	6
TOTAL	117	257	580	102	434	231

(Source: Office of the Registrar, Federal Court of Malaysia)

Although Selangor and the federal region (Kuala Lumpur) had the most private lands acquired for public infrastructure (e.g., highways and MRT lines), no known research has investigated the balance of public and private interests in those land acquisitions. Considering this, it is critical to examine whether Malaysian land acquisition law and practice address the pressing issue of balancing competing interests in these cases, and if so, to what extent they have struck a balance between public and private interests.

3 Methodology

This study examined the stakeholders' perspectives to find the balance of interests in land acquisition in Malaysia. In theory, the law states the public side clearly but keeps the non-public side hardly visible. In reality, public and private expression only become transparent through practical application. This study explored what people thought of land acquisition, how they responded, and how far they were ready to sacrifice. The study used a questionnaire survey to collect data from the stakeholders.

3.1 The Necessity of Questionnaire Survey

The study used an online questionnaire survey between June 2021 to April 2022 to identify the balance of rights in Malaysian land acquisition in law and practice. The survey had two angles: the land acquisition procedures and the compensation process. It focused, among others, on whether individuals or families knew of the land acquisition, whether the compensation was adequate, and whether the land price matched the market value.

3.2 The Type of Questions

Several landowners involved in land acquisition, especially in Kuala Lumpur and Selangor, received the questionnaires. The researcher focused on the viewpoints, attitudes, and experiences of those who are affected by the land acquisition. The questionnaire included both qualitative and quantitative inquiries. The survey employed two types of questions: (1) before land acquisition and (2) after land acquisition. Multiple choice and ranking questions were all included in the survey. The purpose of the survey is to identify the perceptions of the affected stakeholders on the balance of public and private rights before and after the land acquisition procedure.

3.3 Participants of the Survey

The researcher distributed 100 questionnaires to respondents in Kuala Lumpur and Selangor, out of 100, 38 individuals or family members whose land and properties were subject to the land acquisition completed and returned the questionnaires. Based on the profiles, 55.3% lacked tertiary-level qualifications, while a minority had no formal schooling (5.3%). Thus, understanding a land acquisition plan would be difficult for them. Besides, 56.2% of the respondents were over 50 years old, 40.5% were unemployed, and 40.4% had more than six family members. They were likely more concerned over daily activities such as providing food for their families.

4 Findings and Discussion

This section presents the findings and identifies relevant variables to comprehend the nature of compulsory land acquisition in Malaysian law and practices. Malaysian and Australian approaches represent the basis for discussion. Australia's best practices have demonstrated a posture that provides a fair balance between public and private interests in land acquisition [6]. A balance is feasible if the law and practice guarantee the right to be informed, heard, and to make objections [7].

4.1 Right to be Informed

Land acquisition in Malaysia has two stages: during the proposal and after-approval stages. The Land Acquisition Act 1960 requires the authority to issue several notices, such as the land acquisition (Form A), the letter of Authority (Form B), the land acquisition declaration (Form D), and the award and offer of compensation (Form H). The practice suggests that the legislation seemingly reckons the right to be informed but provides no mechanism for proper execution. For example, the Act does not specify that Form A be served personally to interested parties.

Table 4 shows that of 38 respondents, most affected persons (n =24; 63.16 %) received Form H, whilst a minority of the respondents received all notification forms (13.16%), followed by 10.3% without notice, 7.89% received Form A and Form D, and 5.26% received Form B, confirming the execution flaw.

Table 4: The respondents' sources of land acquisition information

Number of respondents	Notices
5/38 (13.16%)	Received all notices
24/38 (63.16%)	Only received Form H
3/38 (7.89%)	Only received Forms A and D
2/38 (5.26%)	Only received Form B
4/38 (10.53%)	Did not receive any notice

Since no law requires official notices to alert each affected individual before the land acquisition proposal, the right to know about the acquisition does not exist. The State Authority will notify the affected persons by publishing the decision on land acquisition in the State Gazette, as required under sections 4(1) and (2) of the Act. Upon publication, the authority has completed all essential steps, and the decision is legally enforceable. The affected persons have no choice but can express objections if they disagree with the acquisition decision.

Unlike Malaysia, Australia highly values the pre-acquisition process outlined in Part V of the Australian Lands Acquisition Act 1989. The primary step is tying all the land acquisition processes together, and the right to be informed must start at the proposal

stage to proceed with the rest of the acquisition process. During the proposal stage, the Minister must give a copy of the pre-acquisition declaration to affected persons, with a sketch showing the location of the land to be acquired and a statement summarizing the principal rights and interests affected by the pre-acquisition declaration, as required under Section 22(7), Division 1 of Part V of the Lands Acquisition Act 1989. Section 23 of the same statute further mandates the publication of a copy of the pre-acquisition declaration in the Gazette and a local newspaper.

The law requires advanced notification of the decision to acquire land and applies to circumstances where land acquisitions are urgently necessary. The Minister must serve a copy of the urgency certificate to the affected parties under section 25(4)(b) of the Lands Acquisition Act 1989. Upon decision confirmation and verification of the land acquisition, the Minister will give each affected person a copy of the pre-acquisition declaration within 14 days after the Gazette publishes it, as required under Section 48, Division 2, Part V of the Act. This exemplary land acquisition information system should be a model for Malaysia to emulate.

4.2 Right to be Heard and to Participate

Table 5 presents the result on the right to be heard and to participate in land acquisition projects. More than half of the respondents (n=25; 65.79%) had no right, 26.32% (n=10) had the right, and 7.89% (n=3) with the right did not understand the projects. The results suggest that the affected persons experienced difficulties providing inputs on land acquisitions.

Table 5: The respondents' views on their role in the land acquisition process

Number of Respondents	Not given the right to be heard	Given the right to be heard	Given the right to be heard but the project is difficult to comprehend
38	25/38 (65.79%)	10/38 (26.32%)	3/38 (7.89%)

Since Malaysia is a society of high-power distance and collectivism, affected persons may hesitate to provide feedback or raise concerns. The impacted persons might not be aware of, exercise, or signify their rights to be heard and to participate. They would also likely believe the land acquisition is for the public good and helps future generations.

Some inconsistencies and ambiguous procedures in the right to be heard and to participate exist between the law and the practice in Malaysia. Sections 3A(3) and 3B of the Land Acquisition Act 1960 allow negotiation with registered proprietors to participate in the land acquisition project but do not automatically grant it. The State Economic Planning Unit (EPU) will determine the suitability of the participation and then will direct the applicants to engage with the registered proprietors. If not, registered landowners could not participate in the land acquisition project. Other parties who hold beneficial interests in the land, such as occupants or non-registered

proprietors, are not entitled to the limited right to be heard and the right to participate under sections 3A(3) and 3B.

Unlike Malaysia, the Australian legal system recognizes the right to be heard even during the pre-acquisition stage. Section 22, Division 1, Part V of the Lands Acquisition Act 1989 clarifies that impacted persons own an interest in the land. Section 6, Part II of the Lands Acquisition Act 1989 defines an interest as any legal or equitable interest in land. Section 26(1), Division 1 of Part V of the Lands Acquisition Act 1989 allows impacted persons to request the Minister to review the land acquisition decision in the pre-acquisition declaration.

4.3 Right to Make Objection

Under Malaysian law, persons dissatisfied with the acquisition decision do not have the right to object during the proposal stage. The right to object is only available through an application to the court, as provided under Section 37(1) of the Land Acquisition Act 1960. The Act limits the grounds for challenging the acquisition to the measurement of the land, the amount and apportionment of the compensation, and to whom the compensation amount is payable.

Based on the survey, of the 38 respondents, only 12 (31.58%) raised objections. Most respondents (n=22, 57.89%) unwillingly accepted the acquisition decision, while the remaining four (10.53%) indicated they did not know what to do. The results demonstrate that most respondents were unaware of their right to object to the land acquisition decision. All respondents (n=38, 100%) were unsatisfied with the land acquisition procedures for various reasons, as shown in Table 6. Most respondents were dissatisfied with the amount of compensation (n= 20, 52.63%), whilst others cited other reasons, such as the non-public use of the acquisition, the non-compliance procedures, and the time-consuming compensation process with equal frequency and percentage for each (n=6, 15.79%). The dissatisfaction among the affected persons suggests that the authority should revisit and improve the land acquisition procedures.

Table 6: Reasons for the respondents' dissatisfaction with land acquisition

Reasons of dissatisfaction	Number of respondents
Inadequacy of compensation	20/38 (52.63%)
The acquisition is not for public use	6/38 (15.79%)
Non-compliance of procedure	6/38 (15.79%)
Lengthy-time to get compensation	6/38 (15.79%)

On the other hand, people in Australia are more aware of their right to lodge objections than those in Malaysia. Australia's social norms and legal system respect

private interests. The legal system allows affected people to object to land acquisitions during the proposal stage. Section 31(1), Division 2, Part V of the Australian Lands Acquisition Act 1989 provides the grounds for challenging the proposal, such as the nature of the public purpose, the effect of the acquisition on the affected persons, and the impact on the environment.

4.4 Right to Adequate Compensation and Other Assistance

Compensation is one of the most pressing concerns in land acquisition because it directly impacts the livelihood of those affected, resulting in satisfaction or dissatisfaction. Most affected persons perceived the compensation as unfair or very unfair (see Table 7) and cited the reasons for the perceived unfairness (see Table 8). The reasons resulted from no consideration for non-monetary or personal values (n=13, 34.32%), acquisition urgency (n=11, 28.95%), land value rise (n=9, 23.68%), negotiation (n=3, 7.90%), and alternative compensation methods (n=2, 5.25%).

Table 7: The level of satisfaction with compensation among the respondents

Number of Respondents	Fair and very fair	Unfair and very unfair
38	15/38 (39.47%)	23/38 (60.53%)

Table 8: Reasons for inadequate compensation from the perspectives of the respondents

Reasons for inadequate compensation	Number of respondents
Urgency of acquisition	11/38 (28.95%)
Increase in land value	9/38 (23.68%)
Non-monetary or personal land values (such as historical, cultural and social attachment)	13/38 (34.21%)
Comparative method was not used instead the compensation was paid based on the budget of the project	2/38 (5.26%)
Non-negotiated compensation	3/38 (7.90%)

The findings suggest that Malaysian law merely considers tangible aspects of the land in determining compensation without considering intangible values or equitable

principles [8]. In most cases, the state merely provides monetary compensation, even though Section 15 of the Land Acquisition Act 1960 empowers the states to determine the form, either monetary compensation or an equitable arrangement with the affected parties. The Act does not define how to create the alternative, and no local case law is available to illustrate how the courts have interpreted such an arrangement. Filling this gap is crucial to ensure a balance of public and private interests exists in the land acquisition practice and safeguard affected individuals from actual loss.

Malaysian legal practice could model Australia's best practice in determining compensation. In Australia, Division 2 of Part VII Lands Acquisition Act 1989 enumerates a broader set of principles for establishing adequate compensation. Section 55(2) specifies must-factors in determining the amount of compensation, including (i) the market value; (ii) the value of any financial advantage received in addition to market value; and (iii) any loss, injury, or damage suffered, or expense reasonably incurred as a result of the acquisition's urgency under Section 24. The law includes the urgency element besides the market value in calculating the compensation amount and considers other factors, such as added financial value. Land value to an affected person is above and beyond the market value, and it pertains to a financial advantage that the affected person enjoys (at the time of the land acquisition) from ownership interests in the land.

If there is no market value available to assess the compensation of the land, and the affected persons had purchased or intend to buy another land to replace the acquired land, Section 58(2) specifies such value determinant. Land with a higher market value and the net acquisition cost concerning the interests in the new land shall represent the market value of the acquired land. In the case of tenancy and lease, affected parties may deserve compensation for the value of the affected property held under the lease or tenancy agreement. They may also seek compensation for valuation, reasonable legal or professional fees, and out-of-pocket expenses incurred from the acquisition. If a residence is on the acquired land, a payment known as 'solatium' is made to cover the hidden costs of having to move from the rented or owned home. Section 61 provides each household with an amount equivalent to AUD 10,000.

5 Conclusion and Recommendations

The findings of this survey in Malaysia have a clear message for the country. Establishing a procedural framework that safeguards peoples' rights while maintaining a proper balance between public and private interests is crucial. This concept is evident in Australia's land acquisition process, which would be beneficial for improving Malaysia's land acquisition regime.

In theory and practice, the balance of rights in Malaysian land acquisition tends to prioritize public interests above those of individuals. Malaysia must amend the legislation to strike the right balance between public and private interests. Incorporating procedural safeguards and providing adequate compensation can maintain the balance. Since land acquisition involves competing interests, it must meet two primary criteria of maintaining a proper balance between public and private interests. First, a tight procedure must ensure that neither the authorities nor individuals can misuse land acquisition. Second, state authorities must adequately compensate affected individuals.

The most critical procedure is that authorities must inform affected persons of land acquisition in advance, particularly during the proposal stage and after the conclusion of the acquisition decision. They must give the affected people the right to participate in the project and negotiate the compensation. They can also emulate other types of assistance, such as paying solatium to all affected persons, as practiced in Australia. Stakeholders should have equal opportunity to provide feedback or input in the land acquisition decision-making at all stages, regardless of whether they are registered proprietors or interest-holders.

Decision-makers must consider stakeholders' concerns. If decision-makers cannot resolve conflicts or issues, the court or the land administrator must hear all objections. On the other hand, the State Authority or the land administrator should have the power to handle uncontested matters such as public complaints. Stakeholders' views on the acquisition plan and their interests must receive prompt responses and acknowledgment from the authorities. Stakeholders must also obey and follow the land acquisition procedures, including individuals' respect for the public interest and public order under the law.

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