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EMPIRICAL STUDY OF LAND ACQUISITION IN PENINSULAR MALAYSIA: ACHIEVING EQUILIBRIUM ON COMPETING 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. The property right, however, is not absolute because it is subject to the state's authority to compulsorily acquire land that is in private hands, which is referred to as land acquisition. Land acquisition refers to the power granted to the state government to obtain privately owned land for a public purpose, in exchange for fair compensation (Keith et al., 2008). Land acquisition is an essential strategy for the state to address the limited availability of land when it is necessary to create railways, airports, or any other infrastructure for the benefit of the public (Jonathan, 2012). Nevertheless, the process of acquiring land is a lengthy procedure that has a significant influence on the local community. This is because it involves conflicting interests between the government that is seemingly acting on behalf of the general public, and the very public who are affected by the acquisition itself. Therefore, the

land acquisition system is supposed to be designed as a method of reconciling these conflicting interests. Despite this ideal purpose, numerous countries, particularly in emerging nations like Malaysia, face challenges in achieving a harmonious equilibrium between the conflicting public and private interests. These challenges arise from inadequate legislative safeguards and a conventional hierarchical approach adopted by the government branches of the state (Ghimire et al., 2017). The public aspect is usually legally defined, but private perspectives may not always be apparent. In order to achieve the right balance between conflicting public and private interests, this study aims to examine the perspectives of the individuals, i.e., the landowners who are directly affected by the land acquisition. This study examines their perceptions and attitudes towards the whole process and procedures of the land acquisition to which they were subjected, as well as their corresponding responses and willingness to make sacrifices in pursuit of the higher objectives of the state. To achieve this goal, a questionnaire survey has been used as the methodology of collecting data from the landowners and the results are presented using descriptive analysis. The outcome demonstrated that whenever the state exercises the power of land acquisition, the balance tends to side with the interest of the public rather than the private interests of the affected individuals, both in law and in practice. In addition, Malaysia became a member of the United Nations on 17 September 1957. Hence, it is crucial to examine the principles of compulsory land acquisition as delineated by the United Nations study (Keith et al., 2008). The final section of this article provides an analysis of the findings and then make recommendations by referring to Australia's best practices for adoption in Peninsular Malaysia. The methodologies employed in this study are the data collection method and comparative legal analysis.

Keywords: Land acquisition, right balance, public and private interests, procedures, compensation.

INTRODUCTION

Land is an important type of property in peoples' lives because it provides a sense of belonging and security to its owners. Land is also considered as a vital source of economic and social survival, particularly in developing countries. Due to the significant value attached to land, private property rights towards individuals' property

ownership and the right to peaceful enjoyment of land are considered as one 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. If land acquisition is done properly, it 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, reasonable and adequate compensation. This is because conceptually, the whole process would try to balance the competing interests of the state, as well as accommodating the rights of the affected landowner. According to Ghimire et al. (2017), developing nations are facing common problems and difficulties in balancing public and private interests, such as the lack of legal protection and the traditional top-down approach by the state government in land acquisition practice. This has resulted in land conflicts between the state and affected persons.

In nations marked by swift economic growth and dense population, such as China and India, land acquisition has arisen as a multifaceted political hurdle, occasionally resulting in political instability and instances of violence (Tagliarino, 2019). In India, the government has implemented a higher rate of land acquisition, which is done through the legal principle of Eminent Domain. This is done to promote collective welfare. As a result, many villages have been acquired and their inhabitants have been displaced from their homes (Kumari, 2014). Similarly, in the specific context of a developing country such as Malaysia, there have been multiple occurrences of land acquisition carried out to foster economic advancement (Hamid et al., 2011). Nevertheless, despite these endeavors, the problem of inequality among Malaysian residents has not witnessed significant amelioration (Ling, 2020). Moreover, these households, which include the Orang Asli community, are also grappling with the issue of poverty due to land acquisition (Mohd et al., 2021).

Undoubtedly, land acquisition is crucial for the development of the nation. Nevertheless, this paper contends that the plight of individuals who have been displaced due to the acquisition cannot be disregarded. The displaced communities undergo a complex form of deprivation

during acquisition procedures, which includes not only the loss of their physical land or property, but also their sources of livelihood, social connections, and often conflicts with government officials (Jonathan, 2012). The economic disruption typically results in insufficient compensation for these individuals, making it challenging for them to maintain a sustainable lifestyle in their new environment (Jonathan, 2012). Moreover, there is an absence of adequate mechanisms to efficiently oversee the well-being of these uprooted groups, as the government usually only regards the initial moment of displacement as noteworthy (Keith et al., 2008). The state authorities and the acquisition itself are minimally affected by the circumstances of the displaced communities after the acquisition (Ohya, 2021). Furthermore, the acquisition sometimes includes land located in ecologically vulnerable regions (Ness, 2008). Consequently, the execution of these land acquisitions often leads to a deterioration of the adjacent ecosystem (Ness, 2008). As a result, the acquisitions and projects undertaken by the state government have had a profound impact on the communities and environment. The significance of achieving the right balance in land acquisition lies in its ability to not only promote the advancement of a nation's development, but also to ensure the enduring sustainability of the communities and environment affected by these developmental initiatives.

Considering this, it is essential to examine the process and procedures, as well as the compensation provided by compulsory acquisition under the Land Acquisition Act 1960 (LAA 1960) on the individuals, specifically the landowners who are affected. Thus, this empirical paper seeks to examine how the land acquisition law in Peninsular Malaysia, as provided in the LAA 1960, strives to achieve a balance between competing interests in law, as well as in practice. Prior to delving into the empirical analysis of compulsory land acquisition in Peninsular Malaysia, the first section will address the notion of public interest and private property rights in the context of land acquisition. The objective of the discussion is to ascertain the degree to which the issue of achieving an appropriate equilibrium should be considered in land acquisition. This paper argues that the process of acquiring land requires finding a balance between the public's demand for land and the protection of private property rights. This study examines public perceptions and attitudes towards land acquisition, as well as the corresponding responses and willingness to make sacrifices in pursuit of these objectives by way of a questionnaire. The following section presents the literature review, research background, research

approach, and findings of the study. Furthermore, Malaysia attained membership in the United Nations on 17 September 1957. Therefore, it is essential to analyse the principles of land acquisition as outlined in the United Nations study conducted by Keith et al. in 2008 (Keith et al., 2008). The concluding section examines the findings in light of Peninsular Malaysian legislation, drawing comparisons with Australian law. This study refers to Australia's best practices as a model for reflection. Australian jurisdiction holds significant influence due to historical reasons, as the Peninsular Malaysian Torren system originated from Australia (Maidin & Kader, 2022). Thus, it is observed that it is important to refer to the Australian land acquisition law in addressing the issues arising in achieving a right balance, as well as in offering improvements to enhance the effectiveness of the Peninsular Malaysian acquisition law in achieving a fair distribution of interests.

PUBLIC INTEREST AND PRIVATE PROPERTY RIGHTS

Since the sixteenth century, property rights have been seen as fundamental rights (Gough, 1985; Mann, 1959; Stoebuck, 1971). As a result, many countries have constitutionally guaranteed the right to private property, with the exercise of land acquisition constituting an exception to that protection (Hoops, 2017). From a legal perspective, property is often conceptualized as a bundle of rights and ownership over things. In *Minister for Army v Dalziel* [1994] 68 CLR 269, Rich J expressed that 'property' refers to a collection of rights that can be exercised over a particular asset. Therefore, in a broad sense, every right that the owners possess of an object can be considered as a form of ownership (Maxwell, 2018). In the case of *Lynch v Household Finance Corp* (1972) 405 US 538, 542, US Supreme Court Justice Stewart J stated that property had rights similar to those of individuals.

The explicit recognition and protection of individual property rights in Malaysia is enshrined in Article 13 of the Federal Constitution. According to Article 13(1), persons are protected from being deprived of their property, unless such deprivation is carried out in accordance with the law. However, in the context of land acquisition, there is a specific provision in Article 13(2) that permits such action, provided it is done in accordance with legal requirements and with the payment of adequate compensation.

The Federal Constitution is silent on the criteria for determining public purpose (Allen, 2000). In fact, the Federal Constitution do not even

specifically provide for public purpose being a ground for deprivation of property under the law. As stated, Article 13(1) merely provided that no person may be deprived of their property unless in accordance with the law. Therefore, in effect, the Parliament is empowered to legislate any law that provides for the forceful deprivation of an individual's property, with only the specific constitutional provision of Article 13(2) to be met, which is the payment of adequate compensation.

However, the power to acquire land for public purposes is derived from the Act of Parliament, specifically the LAA 1960. The LAA 1960 establishes the law on land acquisition in Peninsular Malaysia. The LAA 1960 was established to safeguard property rights against any infringement, thereby ensuring the fundamental right to property as articulated in Article 13(1) of the Federal Constitution (Faruqi, 2008). The LAA 1960 is a piece of legislation that authorizes the state authority to intervene with an individual's property rights in the interest of the public good.

The concept of property was established in the case of *Adong bin Kuwau* [1997] 1 MLJ 418 HC, [1998] 2 MLJ 158 CA. In this case, a community of indigenous people were deprived of their means of subsistence due to the deforestation of the forest in which they have been residing. The clearing was undertaken by the state authority to facilitate the construction of a dam. The court adopted a broad interpretation of proprietary rights as outlined in Article 13. The court held that property encompasses both real and personal property. Additionally, property can refer to either the actual object or the valuable rights associated with it. Furthermore, property can encompass various rights, such as possession and enjoyment. The construction of the dam was considered by the court to have deprived the plaintiffs of their entitlement to enjoy their ancestral land and forest resources. Consequently, the state authority was found to be in violation of the prohibition stated in Article 13. Clearly, the right to own private property is an intrinsic human right that grants ownership and enjoyment to the owners. However, this right to private property is not absolute because it is subject to the state's authority to acquire private land. Land acquisition, as the term implies, is the power given to the state to acquire any privately owned land for a public purpose in consideration for adequate compensation (Keith et al., 2008). This inherent power of the state is practiced worldwide and is known by various terms depending on the country's legal terminology, such as 'eminent domain or takings' in the United States, whereas it is known

as 'compulsory acquisition' in Malaysia and Australia (Lindsay & Mills, 2012). Regardless of the names, land acquisition is a critical development tool for the state to overcome any land shortage when it is required to establish railways, airports, or any infrastructure for the public good. However, in most cases, compulsory land acquisition programs necessitate large areas of land and natural resources, leading to the displacement of substantial portions of the local population and environmental deterioration (The Edgeprop, 2011; Jonathan, 2012). This prompts the question as to whether it is imperative for this to consistently be the situation. Can development be achieved by land acquisition without causing the relocation of people? What about persons who have experienced forced displacement? Are their welfare and concerns being equitably prioritized in comparison to the welfare and concerns of others who have profited from the former's selflessness? In light of this, it is crucial to analyze the process, procedures and compensation offered by compulsory acquisition under the LAA 1960 on the persons, particularly the impacted landowners in Peninsular Malaysia. This paper contends that the acquisition of land necessitates striking a harmonious equilibrium between the public's need for land and the safeguarding of individual property rights.

LITERATURE REVIEW

This study is significant as it has addressed the knowledge gaps in the subject of land acquisition, specifically in Peninsular Malaysia. Prior studies recognized the necessity of preserving a harmonious equilibrium of interests in land acquisition. Allen (1993) states that William Blackstone emphasized the importance of upholding the sanctity of property while also recognizing Parliament's authority in acquiring land. Blackstone believed that as long as the principles of compensation and public purpose were met, the two conflicting interests could coexist together. While the compulsory acquisition of land was not frequent during Blackstone's era, he stressed that if it did happen, it should adhere to the two fundamental principles of property rights (Blackstone, 1825 & Allen, 1993). Firstly, by adequately remunerating the landowners for the damages they have endured. Secondly, the legislature must approve the acquisition for the public purpose.

Contemporary scholars, including Keith, Auslan, Knight, Lindsay, and others, concur with Blackstone's viewpoint that countries should

adhere to principles that restrict the use of state power to acquire private property rights in land to situations of public use, public purpose, or the public interest (Keith et al., 2008). Additionally, they stress the importance of clearly defining in the statute, the criteria for determining compensation for land acquisition and guaranteeing that those affected by such acquisition have procedural rights, including the right to receive adequate compensation and the right to appeal. Poorly executed land acquisition procedures can result in substantial economic, social, and political consequences. Li (2015) asserts that if land acquisition is executed inadequately, it can lead to several issues including reduced tenure security, weakened land rights, increased chances of corruption and abuse of power, project delays, and insufficient compensation for landowners and occupants.

It is indisputable that the constitutions and state legislations of numerous countries include measures for reconciling individual rights with public interests. Nevertheless, Ashok, Babie, and Orth argue that each country has a unique approach to the challenge of achieving and sustaining balance (Ashok et al., 2019). Various nations exhibit varied priorities, with some emphasizing public interests, others prioritizing private property rights, and still others seeking a harmonious equilibrium between the two. Divergences can occur due to varying interpretations and implementations of the law by the executive, legislative, or judicial branches of each state.

Some authors have proposed ideas to revise the land acquisition legislation in order to meet the challenges of balancing rights. Hien (2007), for instance, has conducted a comparative analysis of land acquisition in the United Kingdom and Vietnam, focusing on the objective of achieving a harmonious equilibrium between public and private interests. Hien (2007) has suggested reforming the laws regarding the compulsory acquisition of land in the United Kingdom and Vietnam. The proposed reforms aim to provide both substantive and procedural safeguards to the parties affected by these acquisitions. The goal is to address the issue of balancing the rights of the parties conderned in the compulsory acquisition of land in both countries.

Various local authors have deliberated on the issue of land acquisition. For example, Joo and Leng (2018) have explored Peninsular Malaysian land acquisition laws. Alias, Kamaruzzaman, and Daud conducted a study to examine the effectiveness and acceptability of Peninsular Malaysia's present system for compensating the Orang

Asli people who are impacted by land acquisitions (Alias et al., 2010). The majority of local authors, however, do not focus on the subject matter of the present study, which involves examining the process of acquiring land while considering the need to balance the rights of individual landowners.

Based on the information presented, the present researcher has identified that there are deficiencies in the existing literature that has been studied. Prior research has examined land acquisition law, but there is a lack of explicit research on the delicate balance between public and private interests in Malaysian land acquisition, specifically in Peninsular Malaysia. The present research aims to fill this gap by focusing on the interaction between the state, which represents the public, and individuals affected by the land acquisition. Furthermore, although there has been extensive discourse on land acquisition legislation in the literature, no existing research has specifically examined the deficiencies in West Malaysian land acquisition law and its execution from the standpoint of the affected parties. In addition, although the existing literature has provided certain suggestions for improving foreign land acquisition regulations, there is a notable absence of any literature on the incorporation of successful approaches from other countries, like Australia, into West Malaysian land acquisition practices.

The main challenges in achieving a proper equilibrium in land acquisition in West Malaysia can be attributed to two factors. Firstly, there are discrepancies in the process and procedures employed by the state government in acquiring land. Secondly, the compensation provided is solely in the form of monetary compensation and lacks any additional forms of aid. The problem statement of this study is as follows:

> *The delineation of rights between the public and private interests in land acquisition is ambiguous within the West Malaysian legal framework. Furthermore, the compensation provided for land acquisition is insufficient, and there is evidence of discrepancy in the process and procedures of land acquisition. Hence, it is imperative to achieve a harmonious equilibrium between the interests of the general public and private entities when it comes to land acquisition in West Malaysia.*

The primary aim of this study is to ascertain if the process of West Malaysian land acquisition effectively reconciles the competing interests of the involved stakeholders. In order to fulfil the main purpose, the following research objectives are crucial:

1. To analyze and assess the Peninsular Malaysian land acquisition laws in terms of how effectively they have balanced the rights of the states and the individuals affected by the acquisition.
2. To examine and assess the execution of land acquisition legislation in practice from the perspective of affected landowners;
3. To examine and analyse the United Nation studies and the most effective methods employed by Australian authorities to achieve a harmonious equilibrium between the interests of the public and private sectors in land acquisition; and
4. To propose modifications to the land acquisition legislation in Peninsular Malaysia to achieve a fair balance between the rights of the public and private interests.

RESEARCH BACKGROUND

Before the independence of Malaya on August 31, 1957, there were seven legislations that regulated the process of acquiring private land in different regions of the Federation of Malaya (Joo & Leng, 2018). There were the Land Acquisition Enactment of the Federated Malay States (FMS Enactment No. 22 of 1922), the Land Acquisition Enactment of the State of Johore 1936, the Land Acquisition Enactment (No. 57) of the State of Kedah 1936, the Land Acquisition Enactment of the State of Kelantan 1934, the Acquisition of Land for Railway Purposes of the State of Perlis, the Land Acquisition (Extension to Terengganu) Ordinance 1952 and the Land Acquisition Ordinance of the Straits Settlements. These previous acquisition laws were mostly derived from the provisions of the Indian Land Acquisition Act of 1894 (Maidin & Kader, 2022). These acquisition legislations were established by the British Empire to authorise the state government to obtain land for public projects, including the construction of roads, railways, public buildings, and colonial housing (Rau, 1999). The LAA 1960 is the current legislation in Peninsular Malaysia that mandates the acquisition of land. It has replaced the previous laws related to land acquisition (Joo & Leng, 2018).

Since 1971, Malaysia has placed a high priority on the economic advancement of privatisation and infrastructure (Lim, 1982). The LAA 1960 has also adopted a comparable strategy, allowing for the compulsory acquisition of land in favour of private enterprises in order to foster economic growth (Ohya, 2021). Subsequently, the government embarked on a range of extensive mega projects, such as power plants, dams, highways, and industrial and infrastructural projects, with the objective of rejuvenating the country's economy (Lee & Chew, 2017).

From the PLUS highway to the Kuala Lumpur International Airport (KLIA), through the extension of the Light Rail Transit (LRT), and most recently, the Mass Rapid Transit Line Railway Project (MRT), all structures have been developed to ensure infrastructures are provided for the welfare and benefit of the public. These extensive projects, on the other hand, necessitate the acquisition of extensive land and use of natural resources and have led to the displacement of substantial portions of the local people and environmental deterioration (The Edgeprop, 2011 & Jonathan, 2012).

This has consistently been an integral aspect of the narrative of development progress, particularly in Peninsular Malaysia. The purpose of the development of the Kuala Lumpur International Airport (KLIA), for instance, is to facilitate and manage a diverse range of local and international flights in West Malaysia. However, it has required the displacement of five Temuan villages in the Sepang district (Bunnell & Nah, 2004). These villages cover a total area of 20,732 acres. Another example is the Orang Asli village at Kampung Bukit Tampoi which has been relocated to make room for the construction of the North-South Highway and roads in the Klang Valley, which aim to improve highway connection for different places in the cities (Bunnell & Nah, 2004). Meanwhile, the building of the MRT Project 2 required the evacuation of 253 company owners from Ampang Park Shopping Centre (Tan et al., 2019). In addition, the MRT Project 1 required the relocation of 406 landowners (Abd Manap & Bachan, 2016). In 2013, a report indicated that the Pengerang Integrated Petroleum Complex (PIPC) acquired a total of 1,157 land plots spanning 6,603 acres from landowners (Rohani et al., 2019). This acquisition had an impact on 5,425 individuals from 1,085 families (Rohani et al., 2019).

Furthermore, Table 1 and Table 2 indicate the total number of land acquisition cases filed in Peninsular Malaysia's High Court between

2015 and February 2020, with a total of 3,834 cases. Table 1 shows the increasing trend of statistics in land acquisition cases for all states in Peninsular Malaysia from 2015 to February 2020.

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**

Note. Source is the Office of the Registrar, Federal Court of Malaysia.

Meanwhile, Selangor's High Court has recorded the highest number of cases than any other states in Peninsular Malaysia. This is seen in Table 2. Table 2 shows that with 1,274 cases, Selangor had the most number of land acquisition cases. As a result, the majority of the data for this study will be collected from Kuala Lumpur and Selangor.

Table 2

N*umber of Land Acquisition Cases According to States, Filed in the High Courts of Peninsular Malaysia from 2015 to February 2020*

Number of Land Acquisition Cases in Each State in Peninsular Malaysia							
Year	**2015**	**2016**	**2017**	**2018**	**2019**	**February 2020**	**Total**
Perlis	23	10	7	4	0	0	**44**
Kedah	0	0	1	6	103	6	**116**
Penang	3	57	69	94	40	5	**268**
Perak	16	90	78	43	4	9	**240**
Selangor	120	276	255	384	233	6	**1,274**
Kuala Lumpur	3	26	49	46	44	3	**171**

(continued)

Number of Land Acquisition Cases in Each State in Peninsular Malaysia							
Year	**2015**	**2016**	**2017**	**2018**	**2019**	**February 2020**	**Total**
Negeri Sembilan	75	11	2	12	17	0	**117**
Melaka	22	52	80	67	25	11	**257**
Johor	162	77	195	77	52	17	**580**
Pahang	35	8	33	7	19	0	**102**
Terengganu	73	133	113	33	60	22	**434**
Kelantan	91	46	34	18	36	6	**231**

Note. Source is the Office of the Registrar, Federal Court of Malaysia.

Table 3

Number of Land Acquisition Lawsuits Filed in the High Courts of Kuala Lumpur and Selangor from 2015 to February 2020

Number of Land Acquisition Cases in Kuala Lumpur and Selangor			
Year	**Kuala Lumpur**	**Selangor**	**Total**
2015	3	120	**123**
2016	26	276	**302**
2017	49	255	**303**
2018	46	384	**430**
2019	44	233	**277**
Feb 2020	3	6	**9**
TOTAL	**171**	**1,274**	**1,444**

Note. Source is the Office of the Registrar, Federal Court of Malaysia.

In light of this context, the compulsory acquisition of land has had a direct influence on both the broader progress of the nation and the well-being and sustenance of its population. Hence, it is critical to examine whether the Peninsular Malaysian land acquisition law and practise has addressed the pressing issue of balancing the competing interests resulting from land acquisition under the LAA 1960 on the individuals, specifically the landowners affected by it, and if so, to what extent they achieve a balanced equilibrium between public and private interests. To the best of the present researcher's knowledge, there has not been enough research done, specifically on balancing the public and private interests in Peninsular Malaysian land acquisition, and particularly in Kuala Lumpur and Selangor. The selection of these two sites for the distribution of the questionnaire of this study is based on the data presented in Table 2, which indicates that Selangor had the highest number of land acquisition instances, totalling 1,274

cases. Meanwhile, Kuala Lumpur was selected due to the author's established connection with the Kuala Lumpur land office.

RESEARCH METHODOLOGY

The methodologies employed in this study are the data collection method and comparative legal analysis. The data collection method aims to examine current practices and uncover any conflicts between the law and its practice in compulsory land acquisition in Peninsular Malaysia. It also seeks to understand the overall impact of land acquisition laws on affected landowners. The public aspect is legally defined, but private viewpoints may not always be readily apparent. The actualization of public and private expression can only be achieved through practical implementation. This study aims to examine the perspective of landowners in order to determine the optimal approach in achieving a balance of interests in land acquisition in Peninsular Malaysia. This study examines public perceptions and attitudes towards land acquisition, as well as their corresponding responses and willingness to make sacrifices in pursuit of these objectives. In order to achieve this goal, a questionnaire survey has been used as a method of collecting data from the stakeholders.

In addition to the data collection, the comparative legal analysis method assesses the legislation to ascertain its characteristics, hence facilitating comprehension of the existing principles of compulsory land acquisition and the basic rights given to the affected persons. Since Malaysia attained membership in the United Nations on 17 September 1957, it is therefore, essential to analyze the principles of compulsory land acquisition as outlined in the United Nations study (Keith et al., 2008). The analysis of the findings also examines the results in light of the legislation in Peninsular Malaysian, drawing comparisons with Australian legal principles. Peninsular Malaysia refers to Australia as a model for implementing best practices. The Australian jurisdiction wields considerable influence due to historical factors, as the Malaysian Torren system originated from Australia (Maidin & Kader, 2022). Therefore, it is crucial to refer to the Australian land acquisition law when dealing with the challenges that arise in attaining a proper equilibrium, and making enhancements to increase the efficacy of the Peninsular Malaysian acquisition legislation in ensuring a just distribution of interests.

The Necessity of a Questionnaire Survey

The study was conducted by way of an online questionnaire survey, with the goal of identifying the right balance in Peninsular Malaysian land acquisition in law, as well as in practice. The survey examines the perspective of the affected landowners from two aspects, i.e., the land acquisition procedures and the compensation process. It focused, among others, on whether individuals or families are aware of the legal procedures of land acquisition, whether they believe the compensation is adequate and the land price is updated to the market value. The survey was carried out between June 2021 to April 2022.

The Type of Questions That Was Employed

Questionnaires were distributed to a total of 100 landowners who had participated in the land acquisition process, particularly in Kuala Lumpur and Selangor. The researcher was able to focus on the viewpoints, attitudes, and experiences of those who were affected by the land acquisition because the questions included both qualitative and quantitative inquiries. The survey employed two sorts of questionnaires: (1) before their land was obtained; and (2) after their land was acquired. Multiple choice questions, and ranking questions were all classified in the survey. The purpose of the survey is to identify the perceptions of the affected stakeholders on the balance of the public and private rights before and after land acquisition procedure.

Participants of the Survey

The questionnaire survey was distributed among 100 respondents in Kuala Lumpur and Selangor, all of whom had recently gone through land acquisition procedures. Out of the 100, 38 questionnaires were answered and returned. The survey was responded by individuals or family members whose land and properties were subjected to land acquisition.

RESULT OF THE SURVEY

The Issue of Information of Land Acquisition During Pre-Acquisition Stage

This is an area of concern where affected individuals must be aware of the acquisition and thoroughly understand their legal rights,

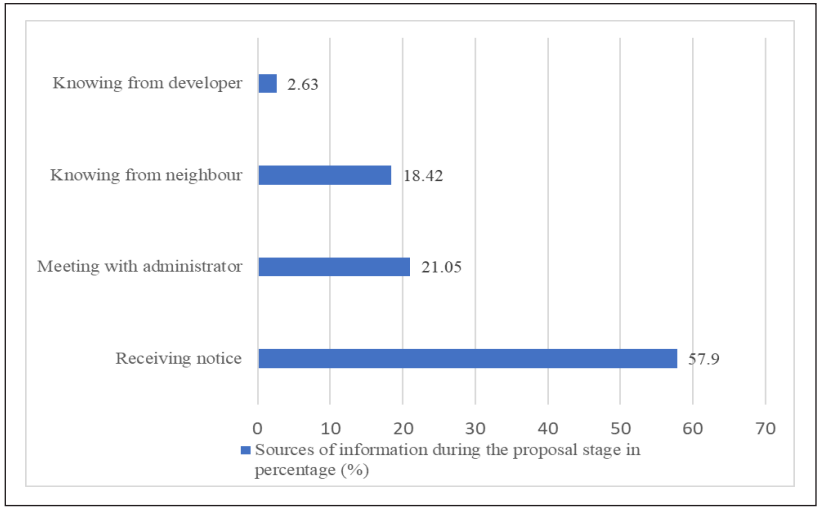
especially during the pre-acquisition stage. This is a prerequisite in land acquisition procedure from the perspective of balancing competing interests (Hien, 2007). Section 4(1) of the LAA 1960 requires the publication of a preliminary notice in Form A in the Gazette. This notice is intended to notify the general public that some land in a certain area of the state may be necessary to be acquired for public use or for other reasons specified in section 3 of the LAA 1960. However, the LAA 1960 does not clearly specify whether a hearing should be conducted with the affected individuals prior to making the decision to acquire the land. Furthermore, under the LAA 1960, there is no mandatory procedure to guarantee that land acquisition proposals are made public. When comparing the law to practice, it is discovered from the survey that the state authority, on the other hand, keeps important details of the land acquisition, such as the project proposal, layout and land acquisition plan, confidential during the pre-acquisition stage. From the survey conducted by the researcher, 37 respondents (97.40%) stated that they did not see the detailed proposal of the land acquisition that affected them. Only 1 respondent (2.60%) discovered the details of the proposal from the developer. In this circumstance, the affected owners have no means of knowing whether or not they will be involved in the land acquisition decision-making process.

Furthermore, according to the results of the survey, as are shown in Figure 1, 22 of the 38 respondents (57.90%) were only aware of the land acquisition after the land administrator issued the notification. This demonstrates that they only learned about the acquisition after the state authority had approved it. Meanwhile, 8 respondents (21.05%) were aware of the acquisition during a formal meeting with the land administrator, 7 respondents (18.42%) learned about it from neighbours, and 1 respondent (2.63%) found out from the developer. According to Hien (2007), those impacted by compulsory land acquisition must possess a comprehensive understanding of their rights, particularly at the stage of land acquisition planning and proposal. This is to ensure that there is fairness in the process of the planning and proposal of the land acquisition; it is crucial when it is about effectively executing the legislation, as it directly impacts the capacity of the parties involved in making representations on it (Faruqi, 2008). However, the current land acquisition practice certainly falls short of providing affected owners with information of the land

acquisition, particularly during the proposal stage. This is crucial for obtaining feedback from the relevant stakeholders, including the affected landowners, as this in turn would help in balancing individual and collective interests.

Figure 1

The Respondents' Perceptions on the Sources of Information During the Proposal Stage



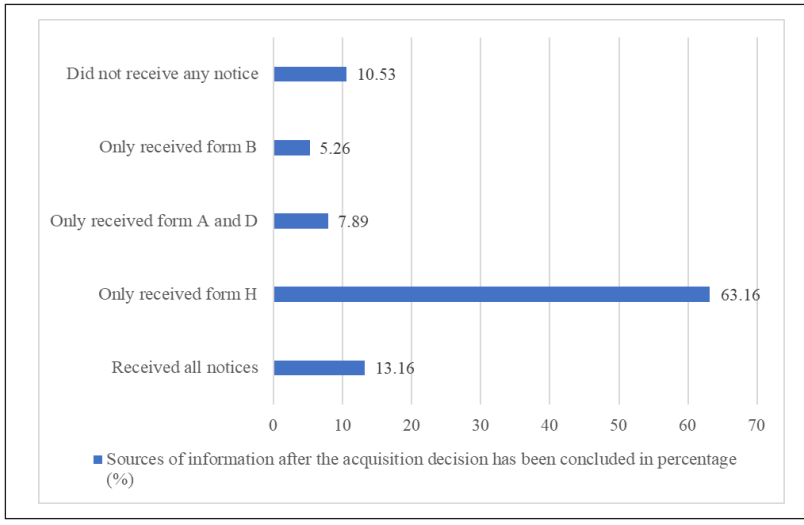
The Issue of Information After the Acquisition Decision Has Been Concluded

The formal statutory notification such as formal letters, press releases, and site notices, is crucial in increasing public awareness of the land acquisition plan. Despite the fact that Peninsular Malaysian acquisition legislation mandates publication of notices in the Gazette whenever the State Authority is satisfied that any land is likely to be acquired, the practical finding (as shown in Figure 2) has revealed that only 5 respondents (13.16%) had received all types of notices. While around 24 respondents (63.16%) claimed that they only received the compensation notification in form H, 3 respondents (7.89%) mentioned that they had received only forms A and D, 2 respondents (5.26%) claimed that they had received only form B and 4 respondents (10.53%) stated that they did not receive any notice at

all. Thus, there is a clear discrepancy between what the law mandates and what affected individuals actually experienced in practice.

Figure 2

The Respondents' Perceptions on the Types of the Sources of Information After the Acquisition Decision Has Been Concluded



The Issue of Involvement in the Land Acquisition Procedure

This issue is divided into two, firstly, whether the respondents are given the opportunity to provide information during the land acquisition proposal and secondly, whether they are allowed to participate in the land acquisition project after the state authority has approved the proposal. Whenever land is required for any of the acquisition purposes specified in section 3 of the LAA 1960, the land administrator must prepare and submit to the state authority a detailed plan encompassing the entire land area. The plan should clearly identify the exact parcels of land or sections that require acquisition, accompanied by a comprehensive inventory of these properties in Form C. The purpose of submitting a plan is to assist the state government, as has been stated in the case of *Syed Omar Alsagoff & Anor v State of Johore* [1975] 1 MLJ 241. However, under the Peninsular Malaysian law, the land acquisition proposal is not usually made public for it to be inspected and commented on by the affected individuals before

it is approved by the state authority. Similarly, the law restricts the participation of the affected persons in the land acquisition project. Under Section 37(1) of the LAA 1960, any individual with an interest is permitted to raise objections only for limited and specific matters, including the land's measurement, the compensation amount, the recipients of the compensation, or issues related to the distribution of the compensation.

In actual fact, the present survey has revealed that more than half of the respondents (25/38) (65.79%) had never been asked to submit feedback or provide suggestions on the land acquisition plan. Only 10 respondents (26.32%) stated that they were asked to provide feedback on the proposed land acquisition. The remaining 3 respondents (7.89%) stated they were asked to submit comments but were unable to do so because they did not understand the proposal. These responses showed that the opinions of the affected persons were not given priority in the land acquisition process, particularly during the pre-acquisition stage. Hence, they were unable to engage in the land acquisition process because they were either not asked or the project was too complicated for them to understand. This raises serious concerns.

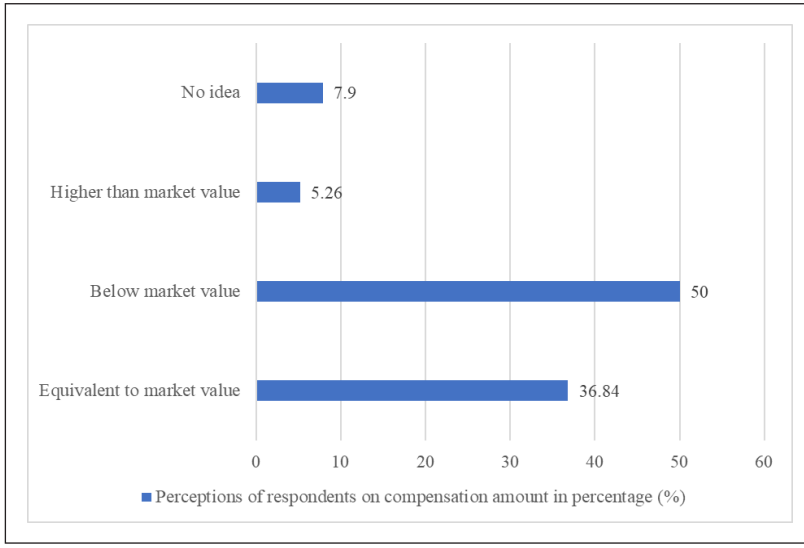
The Issue of Compensation Amount

Compensation has a direct impact on the lives of the affected individuals. Some people may not be concerned about whether the procedure was followed correctly, but they would be concerned about inadequate compensation, which would cause a plethora of problems in their lives. If the individuals are not adequately compensated, the land acquisition will be impractical. Article 13(2) of the Federal Constitution mandates that adequate compensation be paid for compulsory acquisition or use of property. The courts have deliberated on the matter of assessing the adequacy of compensation in numerous cases. The majority of courts such as in the case of *Draman bin Kasim v Land Administrator* [1990] 3 MLJ 465 and *Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Ors* [1998] 5 MLJ 129 have embraced the 'fair market value' criterion, which stipulates that the state government must compensate the landowners for the property based on its current market value. With this in mind, the survey examined the adequacy of the compensation from the perspectives of the affected persons.

The finding as shown in Figure 3 reveals that only 14 of the respondents (36.84%) believed that the compensation was equivalent to market value. In contrast, only 2 respondents (5.26%) perceived that the compensation was paid higher and the other 3 respondents (7.90%) had no idea. Surprisingly, 19 respondents (50%) stated their compensation was paid below market value at the time it was paid.

Figure 3

The Respondents' Perceptions on the Compensation



When asked why they believed that the compensation was inadequate, the most common answer was that the issue of urgency was not taken into account as one of the factors to determine the compensation, with 11 respondents (28.95%) having voted for this reason. Second, 9 respondents (23.68%) indicated that the increase in land value after the acquisition period was neglected. Third, 13 respondents (34.21%) claimed that non-monetary or personal land values (such as historical, cultural, and social attachments) were not taken into account in the compensation. Meanwhile, 2 respondents (5.26%) stated that the comparative method for calculating market value was not used, but the compensation was instead paid based on the project's budget. The remaining 3 respondents (7.90%) indicated that the land administrator

did not engage in any negotiations of the compensation with the respondents.

Overall Perceptions on Objection Procedure

The study, as shown in Figure 4, has revealed that the highest rate of dissatisfaction (20/38) was due to the inadequacy of compensation (52.63%). Other factors include the acquisition's purpose not being made for public use (6/38) (15.79%), the acquisition procedure not being followed appropriately (6/38) (15.79%), and the length of time to get compensation was longer than expected (6/38) (15.79%). This result corresponds to the figures provided by the Office of the Registrar, Federal Court of Malaysia, which shows that from 2015 to 2020 (as shown in Table 4), the most common reasons for land acquisition proceedings were disagreement on the amount of compensation paid, followed by non-compliance with land acquisition procedures.

Figure 4

Reasons of Dissatisfaction Among the Respondents

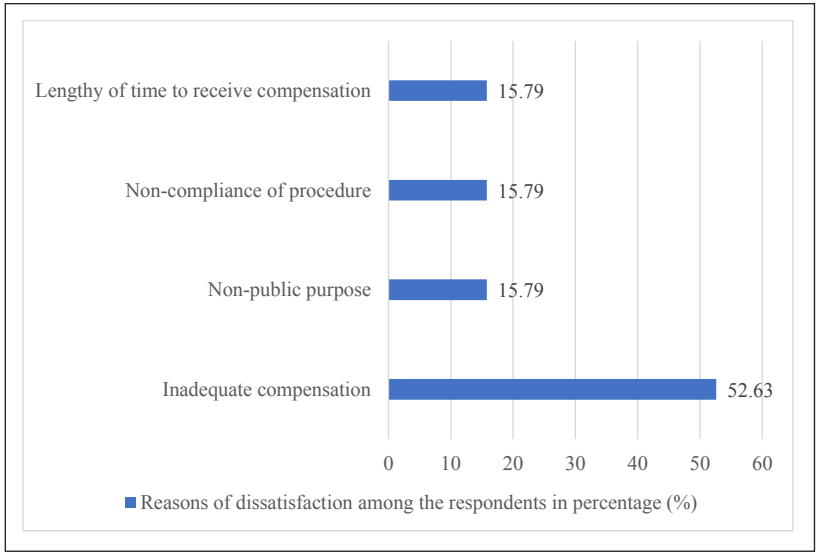


Table 4

Number of Cases from 2015 until February 2020 (High Court), in Accordance with the Type of Cases in Kuala Lumpur and Selangor

Number of Cases According to Type of Cases in Kuala Lumpur and Selangor			
Year	**Non-compliance of Procedure for Land Acquisition**	**Objection Against Amount of Compensation Awarded**	**Total**
2015	0	123	**123**
2016	20	282	**302**
2017	1	302	**303**
2018	0	430	**430**
2019	0	277	**277**
Feb 2020	2	7	**9**
TOTAL	**23**	**1,421**	**1,444**

Application for objections in land acquisition in Peninsular Malaysia is provided for under Part V of the LAA 1960. Despite the fact that Peninsular Malaysian legislation specifies the objection procedure, the number of objections received was insignificant. In order to put these findings in context, it is important to note that not all affected respondents had objected. Only 12 respondents (31.58%) raised objections. 22 respondents (57.89%) reluctantly accepted the acquisition decision without objection. Meanwhile, the remaining 4 respondents (10.53%) said they had no idea what to do. This shows that the affected individuals were uninformed of or unclear on how to proceed with their complaints due to the lack of information. Furthermore, several of them lacked the financial means to pursue their objection any further.

The present survey also examined the level of satisfaction of the respondents on the overall objection procedure. Based on the findings from the 12 respondents, it is evident that none of the Peninsular Malaysian respondents thought their objections were fairly considered. Meanwhile, 6 respondents (50%) highly agreed that their objections were fairly considered. 4 respondents (33.33%) thought their objections were unfairly dismissed. The other 2 respondents (16.67%) believed their objection had been treated very unfairly. According to them, one of the reasons for the perceived injustice was

that most courts had not even considered the question of whether the appropriate balance had been established. Furthermore, according to them, the land administrator favoured developers over impacted landowners.

ANALYSIS OF THE FINDINGS

This part of the paper aims to summarise the findings. Other variables including theory and cultural thinking of the people will be identified in order to comprehend the nature of compulsory land acquisition in West Malaysian practice. Furthermore, Malaysia joined the United Nations on 17 September 1957. Therefore, it is imperative to examine the principles of compulsory land acquisition as outlined by the United Nations. The Food and Agriculture Organisation of the United Nations (FAO) provides a comprehensive guide on the topic of compulsory acquisition of land and compensation in its publication titled "Land Tenure Studies 10: Compulsory Acquisition of Land and Compensation" (Keith et al., 2008). This book highlights the most effective methods and approaches to be followed in cases of compulsory acquisition. According to the FAO study on compulsory acquisition of land conducted by Keith et al. (2008) an effective compulsory acquisition process for a development project should include the following elements to ensure a fair balance between public and private interests in land acquisition (Keith et al., 2008). The procedure of the land acquisition should include, among others, provisions on the planning, publicity, payment of compensation and appeals (Keith et al., 2008). These provisions are crucial for protecting individuals' rights to receive information, have their voices heard, and express legal and practical complaints or objections (Jonathan, 2012).

Subsequently, Australia's best practises will be used as a model for West Malaysian adoption. The Australian approach is chosen because the country has demonstrated a posture that provides a fair balance between public and private interests in land acquisition (Ashok et al., 2019). Furthermore, Australia's jurisdiction holds significant sway given that the Malaysian Torren system originated from Australia (Maidin & Kader, 2022). Hence, it is imperative to refer to the Australian land acquisition law when addressing the issues in achieving a right balance and improving the effectiveness of the West Malaysian acquisition legislation in ensuring a fair consideration of

interests. Hence, the analysis of the findings is based on the West Malaysian law, FAO study and the Australian approach.

Planning and Publicity Procedure

According to the FAO study, in order to ensure successful participation, it is imperative to involve the affected landowners in the planning process and, if required, offer them the appropriate support (Keith et al., 2008). By including them from the beginning, the acquiring authority will be able to thoroughly take into account the cultural, social, and environmental concerns of local people, and determine strategies to minimise any negative impacts of the project.

Conversely, providing notice of the intention to compulsorily acquire land safeguards the rights of individuals impacted by the acquisition (Keith et al., 2008). Prompt notification should be issued to provide individuals the opportunity to raise objections to the appropriation of their property, or challenge any erroneous execution of procedures. In order to ensure that all individuals who may be impacted by the project are informed, it is crucial to broadly disseminate the notice and serve it to all property owners, occupants, and other relevant individuals (Keith et al., 2008). Printed information should be distributed to the households that will be impacted and publicly posted in public spaces and on the land that is about to be acquired. Information should be widely circulated through mainstream media, as well as radio and television broadcasts. The material must be comprehensible: A legal notice is not a true notice if individuals are unable to comprehend its content.

The information should elucidate the objective of the acquisition, specify the land to be acquired, and furnish a concise depiction of the procedures (Keith et al., 2008). The notice should outline the legal entitlements of property owners and occupiers, including the ability to challenge acquisition decisions, and should provide assurance of their rights, particularly in relation to compensation and its timing. The notice should encompass the different temporal constraints, such as the deadlines for submitting claims for compensation. The public meetings should provide information regarding the dates, hours, and locations.

The process of acquiring property in Peninsular Malaysia begins with a pre-acquisition notification submitted in Form A, as outlined in

section 4 of the LAA 1960. Form A serves as the initial notification from the state authority indicating that the land is expected to be necessary and likely to be procured. The notification of Form A is accomplished through its publication in the Gazette and by means of a public notice, which involves posting it at the District Land Office, on public notice-boards in the relevant town, village or mukim (township), and in other suitable locations near the land that is to be acquired, as determined by the land administrator. Nevertheless, the LAA 1960 does not explicitly require that Form A be physically served on any individuals with an interest in the matter (Joo & Leng, 2018). If it is required to access the land that is being acquired in order to do any or all of the operations specified in Form B of the Second Schedule of the LAA 1960, such as conducting a survey of the land or excavating the sub-soil, Form B can be granted to the occupants. Issuing Form B is not obligatory, as there may be no need to perform such tasks. In such cases, no entrance onto the land is required and no written authorisation needs to be provided, as stated in the case of *Ng Kim Moi & Ors Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus* [2004] 3 CLJ 131. When there is a requirement for land to be acquired for any of the public purposes mentioned in section 3 of the LAA 1960, the land administrator must submit and present to the state authority a comprehensive plan of the entire area of the land. This plan should indicate the specific lands, or portions thereof, that need to be acquired, along with a list of these lands in Form C. The obligation to create and present the plan is purely a matter of procedure, and failure to do so does not invalidate the acquisition process, as established in the case of *Lim Goo Kia v Pentadbir Tanah Daerah Kota Tinggi & Ors & Another Case* [2014] 1 LNS 1006. Form D is a document that declares that the mentioned lands are required for the defined uses and is issued once the state authority has made a decision to that effect in accordance with section 8(1) of the LAA 1960. The publication will appear in the Gazette. Nevertheless, the LAA 1960 does not explicitly state that Form D must be personally served on any individuals with an interest in the matter.

The process of acquiring land begins with the land administrator issuing Form E, which serves as a notice of the inquiry date for hearing claims to compensation for all rights in the acquired land, as stated in section 10(1) of the LAA 1960. Form E serves as a notification for the date and location of the inquiry. It also serves as a notice to

all individuals with a stake in the acquired land to attend the inquiry and provide information regarding (a) the nature of their respective interests in the land; (b) the amount and specific details of their claims for compensation related to these interests; (c) any objections they may have to the measurements of the approximate area provided in the schedule; and (d) the names of any other individuals known to the party or their representative who possess any interests in the land or any part of it. Additionally, they are required to present all relevant documents pertaining to their claim. Once the enquiry is completed, the land administrator shall prepare a written document that determines the amount of compensation. This document, known as Form G, is prepared in accordance with section 14(1) of the LAA 1960. When making an award in Form G, the land administrator is required to create and deliver a notice in Form H, in accordance with section 16(1) of the LAA 1960, to every individual who has an interest in the land that has been acquired. In order to preserve its right to object, a party who intends to challenge the award should accept the offer under protest and bring the matter to the High Court, as stipulated in section 30 of the LAA 1960. Failure to serve Form H on the relevant individual does not render the acquisition illegitimate, as established in the case of *Jugajorthy Visvanathan & Anor v Pentadbir Tanah Daerah Seberang Perai Tengah Pulau Pinang & Ors* [2017] 1 LNS 1832. Based on the foregoing, it is clear that compulsory land acquisition procedures necessitate the issuance of several notices. However, according to the LAA 1960, only Forms E and H must be personally served on the individuals concerned. Furthermore, there is also no mechanism in place to ensure that it is properly executed in practice. The following is what the present survey has revealed.

Table 5

The Respondents' Sources of Land Acquisition Information

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

Land acquisition is divided into two stages in West Malaysia, namely the proposal stage and after the acquisition has been approved.

However, there is no law requiring each official notice to be given to each and every affected individual prior to the proposal of land acquisition taking effect. As a result, most of the affected persons are not certain whether or not they will be involved during the acquisition, particularly during the proposal stage. This is a serious and substantial flaw both in law as well as in practice. As mentioned before, to exacerbate the matter, in most cases, the non-service of forms on the person interested does not invalidate the acquisition (Joo & Leng, 2018).

Affected persons in Peninsular Malaysia will only be notified of the land acquisition when the State The authority's decision to acquire their land is published in the Gazette. This is in pursuant to section 4(1) and (2) of the LAA 1960. In fact, the information about the acquisition does not exist until all of the essential steps have been performed and the decision has been rendered legally enforceable. At this moment, the proposal had already taken effect and the decision to acquire their land had already been made. As a result, the affected individuals have no choice but to express objections if they do not agree with the acquisition decision.

It is critical to evaluate the Australian system in order to improve West Malaysia's information process in the acquisition of land. In Australia, the pre-acquisition information process is highly valued, and it is one of the primary processes outlined in Part V of the Lands Acquisition Act 1989. It is a primary step in the process of tying all of the land acquisition processes together. The right to be informed must be met at the proposal stage in order 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 each affected person, along with a sketch showing the location of the land to be acquired and a statement setting out a summary of the principal rights and interests that are affected by the pre-acquisition declaration. This is provided 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. After the decision to acquire the land has been confirmed or varied, section 48 Division 2 of Part V of the Australian Lands Acquisition Act 1989 states that the Minister shall, within 14 days after the publication in the Gazette of the pre-acquisition declaration,

cause to be given to each affected person a copy of the absolute declaration. Hence, it is evident that the affected parties must be informed in advance of the Australian Commonwealth's decision, i.e., its federal government's decision, to acquire their land under the Lands Acquisition Act 1989. The exemplary information system in Australia can be used as a model for implementation in West Malaysia.

As previously stated, the FAO study emphasizes the need to include the landowners affected by a project in the planning process (Keith et al., 2008). The results of the survey, however, indicate that there was a low proportion of respondents who had been granted the opportunity to participate in the decision-making process of land acquisition in the country. The result of the survey is as is shown in the Table 6.

Table 6

The Respondents' Views on Their Role in the Land Acquisition Process

Number of Respondents	Denied the Privilege of Participation	Granted the Privilege of Participation	Granted the Privilege of Participation but The Project Was Difficult to Comprehend
38	25/38 (65.79%)	10/38 (26.32%)	3/38 (7.89%)

In West Malaysia, it was found that there were certain inconsistencies between the law and practice. Practical experience in West Malaysia has indicated that the affected persons found it difficult to provide input on land acquisition decisions. From the findings, 55.3 percent of West Malaysian respondents lacked university-level qualifications. Some of them had no formal schooling (5.3%). Thus, understanding a land acquisition plan would be difficult for them.

Furthermore, the survey has revealed that 56.2 percent of the respondents were over 50 years old, 40.5 percent were unemployed, and 40.4 percent had more than six family members. As a result, they were more concerned in everyday life with providing food for their families. In addition, since Malaysian culture has shaped people's thinking to favor public interests over private interests, they are likely to believe that the land acquisition is good for the public and will help their future generation. As a result, the vast majority of people do not

care to provide feedback or raise concerns about the land acquisition decision.

Adding to the complex nature of the issue, West Malaysian law has several ambiguous procedures relating to the right to be heard and the right to participate. Although sections 3A(3) and 3B of the LAA 1960 allow negotiation with registered proprietors to participate in the land acquisition project, this right is not automatically granted. In fact, it is up to the discretion of the State Economic Planning Unit to decide (hereinafter known as EPU). If the EPU determines that the registered proprietors' participation in the project is suitable, it will direct the applicants to engage with the registered proprietors. Otherwise, it will not be possible for the registered landowners to participate in the project deliberations. To make matters worse, other affected parties such as occupants or non-registered proprietors who hold beneficial interests in the land are not entitled to the limited right to be heard and the right to participate under sections 3A(3) and 3B. This lack of transparency in the land acquisition process is attributable to the flaw in the West Malaysian legislation itself.

Unlike West Malaysia, Australia's legal system clearly recognizes the right to be heard even during the pre-acquisition stage. Persons who are affected by the pre-acquisition declaration may request the Minister to review their land acquisition decision under section 26(1) Division 1 of Part V of the Lands Acquisition Act 1989. According to Section 22 Division 1 Part V of the Lands Acquisition Act 1989, a person is considered to be affected by the declaration if they own an interest in the land. Any legal or equitable interest in the land is defined as an interest in Section 6 Part II of the Lands Acquisition Act 1989.

Appeal Procedure

According to the FAO study, legislation should include provisions that allow owners and occupiers to exercise their right to challenge the compulsory acquisition of their property (Keith et al., 2008). Appeal procedures safeguard the rights of individuals who have been affected. Implementing a reliable appeals process would deter individuals from resorting to alternate forms of protest that could potentially lead to violence and fatalities. According to the FAO study, there are typically three categories of appeals that must be offered in cases of compulsory

land acquisition: firstly, appeals against the project's purpose and the designation of the land to be acquired; secondly, appeals against the procedures employed to carry out the compulsory acquisition; and thirdly, appeals against the valuation of compensation (Keith et al., 2008). The present survey, however, has found that all respondents (38/38) were unsatisfied with the land acquisition procedure for various reasons. The following is a summary of their dissatisfaction.

Table 7

Reasons of the Respondents' Dissatisfaction with Land Acquisition

Reasons of Dissatisfaction	Number of Respondents
Inadequacy of compensation	20/38 (52.63%)
Acquisition is not for public use	6/38 (15.79%)
Non-compliance of procedure	6/38 (15.79%)
Delay in receiving compensation	6/38 (15.79%)

Under the West Malaysian law, persons who are 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 LAA 1960. Under the Act, the grounds for challenging are only limited to the measurement of the land, the amount and apportionment of the compensation, and to whom the compensation is payable.

On the other hand, people in developed countries, such as Australia, are more aware of their right to lodge objections than West Malaysians. This is because societal norms and the legal system respect their private rights (Ashok et al., 2019). As a result, it is not a surprise that people who are affected are given the opportunity to submit objections even during the proposal stage. The grounds for challenging are provided in section 31(1) Division 2 Part V of the Australian Lands Acquisition Act 1989, including the nature of the public purpose, the effect of the acquisition on the affected persons, and the impact of the acquisition on the environment.

Provision on Compensation and Other Assistance

Compensation is one of the most pressing concerns in land acquisition because it has a direct impact on the livelihood of those affected.

According to the FAO study, compensation, whether provided as monetary payment or in the form of alternative land or structures, is a major aspect of compulsory acquisition (Keith et al., 2008). Due to government intervention, individuals experience the unfortunate consequences of losing their residences, properties, and even their sources of income. Compensation is to reimburse individuals for the losses they have incurred and should be determined according to principles of fairness and parity (Keith et al., 2008). The idea of equivalent is essential for assessing compensation in cases of compulsory acquisition. It ensures that affected owners and occupiers are neither financially benefited nor disadvantaged by the acquisition. However, monetary reparation that is based only on the equivalence of land loss seldom accomplishes the objective of restoring affected individuals to their pre-acquisition state; the funds provided cannot totally substitute what has been forfeited (Faruqi, 2008). Australia and other countries have laws that recognize this issue and offer other types of aid, such as granting payment of solatium, to compensate for the compulsory character of the acquisition. In practical terms, given that the objective of compulsory acquisition is to facilitate development, there are strong justifications for offering compensation and additional forms of support to improve the circumstances of those affected.

The result in Table 8 shows the level of satisfaction of the compensation among the respondents.

Table 8

The Level of Satisfaction of Compensation Among the Respondents

Number of Respondents	Fair and Very Fair	Unfair and Very Unfair
38	15/38 (39.47%)	23/38 (60.53%)

According to the data in Table 8, more than half of the respondents believed compensation was unfair. This demonstrates that many West Malaysians are dissatisfied with the payment level of compensation. When asked why they thought the compensation was inadequate, they expressed their dissatisfaction as follows. Table 9 shows the most popular responses.

Table 9

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%)

Clearly, based on the aforementioned findings, Peninsular Malaysian law merely considers tangible aspects of the land in determining compensation without any consideration of its intangible value or any consideration of equitable principles (Salleh & Peng, 2022). In most land acquisition cases, the state merely provides monetary compensation, even though section 15 of the LAA 1960 empowers the state to determine whether compensation should be provided in monetary form or in the form of an equitable arrangement with the affected parties. This is further exacerbated when the LAA 1960 does not define how an equitable arrangement should be created. In fact, up until now, no local case law can be found that shows how the courts have interpreted such an arrangement. This gap in West Malaysian law must be filled immediately to ensure the balancing of public and private interests are maintained in land acquisition practice. Furthermore, it is crucial to safeguard affected individuals from actual loss, even if no land was taken away, they were seriously impaired.

West Malaysian practice could be modelled after Australia's best example, particularly in the determination of 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 factors that must be considered in determining the amount of compensation, including the following: (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.

As can be seen, in calculating the amount of compensation, Australian law considers the urgency element in addition to the market value. Other factors, such as added financial value, may also be taken into account. This is the value of the land to the affected person that is above and beyond the market value, and it pertains to a financial advantage that the affected person enjoys (at the time the land is acquired) as a result of 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) specifically provides for the determination of such value. The greater amount of the market value and the net acquisition cost in regard to the interests in the new land shall be taken as the market value of the acquired interests.

Furthermore, in the case of a tenant or lessee, he or she may be entitled to compensation for the value of the affected property held under the lease or tenancy agreement. In addition, he or she may also seek compensation for valuation, reasonable legal or professional fees, and out-of-pocket expenses incurred as a result of the Commonwealth's acquisition. In case when a residence is acquired on the land, a payment known as the 'solatium' is made to cover the hidden costs of having to move from the home, whether it is rented or owned. Section 61 provides each household with an amount equivalent to AUD10,000.

SUGGESTION AND CONCLUSION

The findings of this survey in Peninsular 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, and it would be beneficial for Peninsular Malaysia's improvement in its land acquisition regime.

Since land acquisition involves competing interests, it has to meet two primary criteria to maintain a proper balance between public and private interests. First, it can only be done through a tight procedure that ensures that neither the authorities nor individuals can misuse the land acquisition process. Second, individuals who have been affected must be adequately compensated.

However, in theory as in practice, the balance of rights in West Malaysian land acquisition normally tends to prioritize public interests above those of individuals. Therefore, procedural safeguards and adequate compensation must be ensured in order to maintain the balance. In addition, the legislation in West Malaysia has to be amended in order to achieve the right balance between public and private interests.

The most significant procedural safeguard is that the affected persons must be informed in advance of the land acquisition, particularly during the proposal stage, as well as after the acquisition decision has been concluded. They must be given the right to participate in the process and the right to negotiate compensation. Other types of assistance as practiced by Australia such as the payment of the solatium must be made available to all affected persons. They must also be given an equal opportunity to provide feedback or input in the land acquisition decision-making at all stages of the land acquisition process, regardless of whether they are registered proprietors or interest-holders. Their concerns must be taken into account by decision-makers. If there are conflicts and the decision-makers are unable to resolve the issues, those objections must be heard by the court or the land administrator.

On the other hand, the State Authority or the land administrator should be empowered to handle uncontested matters such as public complaints. The authority must provide prompt responses to the individuals' views in accordance with the acquisition plan. Affected individuals must obey and follow the land acquisition procedure. These include individuals who must respect the public interest and obey public order in accordance with the law. In a similar vein, private interests must also be respected.

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