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**THE INFLUENCE OF VALUATION RULES
ON THE SUPPLY OF INDIGENOUS LAND IN KUALA LUMPUR**

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Synopsis

Valuation rules may initiate and/or constrain agents' decision to sell or to develop land (Adams *et. al.*, 1985, 1988, 1993). When the value of land for compensation purpose is high, landowners may expect a higher land price in the future. As a result, landowners may be reluctant to sell or to participate in supplying the land for development. Similarly, high valuation for compensation means high acquisition costs, hence, limits the decision of the developer or acquirer to purchase the land for development (Ismail, 1999). This paper examines the existence and implications of valuation rules on the supply of indigenous land in Kuala Lumpur for development purposes. It shows the importance of valuation constraints and the way in which these institutions affect landowners' decisions and, thus, restrict the supply of land for development. In the end, the paper suggests the establishment of an Indigenous Land Tribunal to deal with the problem of valuation constraints in Malaysia.

1.0 Introduction

There are planning, physical, valuation and/or price, ownership and financial constraints which may restrict the supply of land for development purposes (Adams *et. al.*, 1985, 1988, 1993; Ismail, 1999; Tsolacos, 1997). Land developers, for example, who buy land without planning approval may have difficulties to get planning permission for development (Goodchild and Munton, 1985). Gore and Nicholson (1991) asserted that physical constraints lengthen the land development period in terms of extra preparation and construction costs. Adams *et. al.*, (1985, 1988) contend that a market or valuation constraint exists when owners retain land for development in the expectation of a substantial rise in its value. Since landowners' characteristics are highly diverse, their behaviour may affect the feasibility of land development (Adams, 1994; Hutchison *et. al.*, 1996). Healey (1992) and Krabben (1995) consider the existence and importance of various market forces which enable and/or constrain agents' decisions and actions in the land development process. These market 'institutions' are embodied within socio-political and economic forces to govern human activity (Eggertsson, 1990; North, 1996). More specifically, these formal and informal institutions may limit agency co-ordination and integration and, hence, restrict the supply of land for development.

2.0 The rules of valuation for compensation

The law of compulsory purchase is a way of direct control over land development (Goh, 1980). The reason is that the government sees land acquisition as a land assembly process in resolving the land supply problems (Singh, 1995). In other words, land assembly through land acquisition is a way to solve the problems associated with landownership and landowners' reluctance to offer their land for development (Adams, 1995). Ball (1996) noted that the power of compulsory purchase supports the land assembly negotiations in order to avoid situations where individual landowners can freeze development by refusing to sell - particularly by trying to hold out for unreasonable purchase prices. Under certain circumstances, such as when there are landownership problems and passive landowners, the government feels that to undertake land development by compulsory purchase is more complicated, time consuming and expensive rather than to reclaim land from sea for development in certain waterfront areas (Berita Harian, 7 November 1997).

The government intervention over land development is directly exercised under the power of land acquisition as stipulated under the Land Acquisition Act (1960), and provided under Article 13 of the Federal Constitution (1957). This article stipulates that no person may be deprived of property in accordance with law and no law may be provided for compulsory acquisition or for the use of property without adequate compensation. With reference to the clause of the land acquisition by the Federal Government, Article 83 set out detailed procedures for land compensation as stipulated by the Federal Constitution (1957). Therefore, using the power contained in the Land Acquisition Act (1960), the government can acquire land for public purposes with adequate compensation as determined under Schedule 2 of the Act.

However, in general, there are cumbersome frameworks to acquire land for public purposes. Prior to amendment in 1997, under Schedule 2 in the Land Acquisition Act (1960), for example, compensation paid to the affected landowner of the Malay

Reservation Land (under the Malay Reservation Enactment 1913, land identified and alienated as the Malay Reservation Land status is not transferable to non-Malays or foreigners in any circumstances, neither before nor after being developed) should ignore the Malay Reservation status. Therefore, the affected landowners of Malay Reservation Land should receive the open market value of non-Malay Reservation Lands (Nik A Majid, 1993; Nik Zain, 1993). The main reason for this equivalent amount of compensation is to consider the true nature of the indigenous land status before and after acquisition. However, when the landowners of Malay Reservation Land are not satisfied with the compensation paid, they may appeal and, as a consequence, prolong the acquisition process. In extreme cases, landowners' resistance may adversely affect the decision to go ahead with the project. In this case, valuation and landownership constraints are said to exist (Adams *et. al.*, 1985, 1988, 1994).

In general, the compulsory acquisition of Malay Reservation Lands for public purposes is undertaken for the benefit of the Malays since the Malay Reservation Land is not transferable to non-Malays in any circumstances. In other words, there is a limited market for the Malay Reservation Lands (Wan Hamzah, 1992). When the government acquires the land for development or the Malay developers buy the land, they are reluctant to pay a high price or compensation for these lands because of the limited market and the lack of financial resources of the Malay buyers. Since the affected landowners are still asking for high prices of their lands, the government or the private developers may no longer be interested in the land dealings. As a result, the land potential for development remains undeveloped.

In relation to the valuation principle for compensation, prior to amendment in 1997, the First Schedule of the Land Acquisition Act (1960) requires the valuer to determine the compensation of the Malay Reservation Lands to ignore the restriction in interests. As a result, the valuation for compensation of these lands is comparatively higher than the value of the lands with restriction in interests. However, there were cases where the affected landowners were still dissatisfied with these principles of valuation for compensation (Ismail, 1999). These landowners of Malay Reservation Land argued that

the compensation was not high enough and neglected the true value to the owner according to their opinions. As a result, landowners' passive attitudes restrict the proposed redevelopment scheme to acquire some of these land as happened in the Malay Agricultural Settlement areas in Kuala Lumpur in 1992.

Considering the likely development cost which might be higher than expected, if the proposal to acquire the land is to be proceeded with, the government undertook to amend the First Schedule, subparagraph 1 (2A) of the Land Acquisition Act (1960) in 1997. It has been approved that there are two types of compensation to be paid to the affected landowners of the Malay Reservation Lands;

- Firstly, if after acquisition the land is to be devoted solely to the benefit of Malay and related indigenous races, the amount of compensation has to be based on the restricted interests of the Malay Reservation Land. The purpose of land acquired for the construction of a mosque, for example, is solely devoted to certain restricted users. Therefore, the determination of the valuation for compensation must take into consideration the Malay Reservation Land status.
- Secondly, if the purpose of the acquisition of the affected Malay Reservation Land is solely for the benefit of the public as a whole, such as for the road widening scheme or to build a public hospital, the method of valuation has to take into consideration the open market valuation which ignores the restriction in interests of the Malay Reservation Lands (Fernandez, 1997; Usilappan, 1997; Vanajam, 1997).

Therefore, the valuation for compensation cannot be based on the special provision which disregards the restricted use of the Malay Reservation Lands (Fernandez, 1997). This new provision is to stimulate further the development of under-utilised Malay Reservation Land or lands with restriction in interests such as in Kampong Baru through government intervention in land acquisition. The reasons, for this amendment was that, such lands could not be acquired because the landowners had insisted on a higher compensation comparable to lands in the Golden Triangle Area of Kuala Lumpur.

As discussed above, the recent amendment to the valuation principles for compensation enables the land development authority to compensate the affected indigenous MAS landowners according to the purpose of the acquisition. With the amendments to Schedule 2 in 1997, Land Acquisition Act (1960), the valuation has to consider the restriction in interests if the land is to be acquired for the Malay (and Muslims) uses (for example, to build a mosque). Otherwise, in a case when the land is to be acquired for a road widening scheme, the compensation is to consider the open market value of such land without any restriction in interests. On the one hand, when the acquisition is for Malay uses, the acquiring authority has the option to pay lower compensation to the affected landowner (so that the development would be most likely to be carried out with lower cost of acquisition). On the other hand, the affected landowners may be discouraged to co-operate if the land is to be acquired for Malay uses (which means a lower compensation is to be paid to them). However, as far as the new amendment is concerned, the change on valuation principles for compensation was enforced in mid-1997 and, therefore, is yet to be implemented and fruitful (Fernandez, 1997; Usilappan, 1997; Vanajam, 1997).

3.0 The supply constraints on indigenous land in Kuala Lumpur

The empirical work for the case study focuses on a specific urban location within Kuala Lumpur City Hall's municipality area. The case study area is the Malay Agriculture Settlement (MAS) reserve areas which is the indigenous Malay reservation land areas with most potential for redevelopment. It is adjacent to the central of business district in the capital city of Kuala Lumpur. The Malay Agriculture Settlement reserve (MAS) areas as alienated under Land Enactments (1897) are a different category of indigenous Malay Reservation land with similar restrictions in interest which do not allow transfer or occupation by non-Malays. The MAS areas were the first indigenous land established under Land Enactments (1897) as a trial for the implementation of Malay Reservation land under the enforcement of Malay Reservation Enactment in 1913. Therefore, as the first indigenous Malay settlement areas, the landowners in MAS areas have a strong sense of indigenous

culture and values. Other than the different status of indigenous land with similar restrictions in interest, MAS areas are located in the Central Area of Kuala Lumpur, whereas most of the other Malay Reservation areas are located outside Kuala Lumpur or even in rural areas throughout Malaysia. Figure 1 shows the location of selected sites in the case study.



Figure 1: The location of the sample sites in the MAS areas

As shown in Figure 2, the selection of the sample sites in the Kampong Baru's MAS area is reflected by a variety of landownerships, sites' and landowners' characteristics. The figure shows the nature of physical characteristics of the forty sample sites which are small in size and difficult to develop. Many sites are lower than the road level, located in the inferior location, existed as old, obsolete, under-used, semi-permanent structures and/or abandoned traditional residential buildings. In contrast, there are newly-developed office buildings (for example, Lot 33 and 34) and sites already applied planning permissions (Lots 19, 20, 21, 24, 25, 27 and 29).

Landownership and landowners	Developed / Applied to develop/ sites (Lots no)	Undeveloped Sites / underused / underutilised (Lots no)
Methods of acquisition: - alienated - bought - inherited - alienated and inherited - bought and inherited	14(19, 20, 21, 24, 25, 27, 29, 33, 34, 35, 36, 37, 38 and 39) 2(32 and 40) 1(10)	2(3, 7) 6(8, 17, 18, 22, 23, 31) 4(2, 4, 5, 28) 8(1, 6, 11, 12, 14, 15, 16, 26) 3(9, 13, 30)
Present uses of sites: -owner occupy/trading - renting whole - vacant - partly occupied and rented	5(34, 35, 37, 38, 39) 3(10, 32, 36) 7(19, 20, 21, 24, 25, 27, 29) 2(33, 40)	10(1, 7, 9, 11, 13, 16, 17, 18, 26, 30) 2(22, 23) 1(31) 11(2, 3, 4, 5, 6, 8, 12, 14, 15, 16, 28)
Owners' personality: - single owner - multiple owners - Private corporate - Public corporate	1(38) 2(10, 40) 13(19, 20, 21, 24, 25, 27, 29, 32, 33, 34, 35, 37, 39) 1(36)	1(7) 17(1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 26, 28, 30) 4(17, 18, 22, 23) 1(31)

Figure 2 : Landownership of the sites and landowners' characteristics
Source: Ismail (1999)

There are three developed sites and fifteen undeveloped sites which were inherited (or bought and inherited) by single, multiple or corporate landowners from their ancestors to

whom the lands have been alienated by the government in 1897. The majority of these single and multiple landowners intend to leave their land for inheritance. In contrast, there are seven newly developed sites and seven sites with planning permission have been applied for which were purchased by corporate landowners. The purchases were done through negotiation over the price with former multiple landowners and had been developed during the 1990s.

Five developed sites in the sample were owned by private corporate landowners for their own use and twenty-one under-utilised sites were occupied or partly rented to tenants by landowners of undeveloped sites. The multiple landowners of ten undeveloped sites occupying their own traditional houses built during 1960s and 1970s as owners-occupiers and eleven sites were partly occupied and partly rented their buildings.

Twenty-nine landowners of undeveloped sites are staying in the MAS areas by occupying the sites or using the buildings for trading purposes. Among the developed sites, eight sites were owned by landowners who are staying in the MAS areas. In contrast, there are only three landowners of undeveloped sites who are staying outside the MAS areas and renting the buildings to others.

With reference to the landowners' strategies, most landowners of undeveloped sites are reluctant to sell or to undertake the land development on their own. There are eight landowners of undeveloped sites who are willing to sell or to undertake land development with some conditions such as if high prices are being offered to them. However, there are five landowners of developed sites who tend to be willing to sell their land if the price is right.

The attitudes of landowners of undeveloped sites toward selling or developing their land are summarised as shown in Figure 3. It shows that there are ten landowners of undeveloped sites who refuse to sell and nine landowners of undeveloped sites who are reluctant to develop their under-utilised sites. There are also ten landowners of undeveloped sites who are reluctant to sell their lands unless high prices are being offered. There are eight

landowners of undeveloped sites who are reluctant to develop their land unless certain conditions, such as suitable type of development is fulfilled. In addition, their reasons were to preserve inheritance and financial difficulties associated with the development of their land on their own.

Landowners of undeveloped sites	Sites (Lots)	Main reasons for refusal to sell or to participate in land development
Unwilling to sell	10 (1, 3, 4, 6, 7, 9, 11, 14, 15, 16)	Own occupation, inheritance, to preserve traditional house, defective or without title of documents, asking high compensation
Willing to sell with conditions	8(2, 5, 8, 17, 18, 26, 28, 30)	Asking high compensation or high prices, type of development
Unwilling to develop	9(1, 3, 4, 6, 9, 14, 15, 16, 26)	Less enthusiasm due to old ages or illnesses, uneducated, lack of financial assistance and avoiding interests, fear of being cheated again, fear of losing income
Willing to develop with conditions	9(2, 7, 8, 11, 17, 18, 23, 30, 31)	No urgency, financial difficulties, lack of planning information, asking for high compensation

Figure 3: Landowners of undeveloped sites' attitudes
Source: Ismail (1999)

4.0 The valuation constraints

Most landowners are seeking higher prices for their lands or asking high compensation from the government (Lots 3,4 5, 6, 7, 8, 12, 13, 14, 15, 26, 27, 28, 30, 35 and 38). Higher land prices are the result of institutional valuation principles of compensation which contributed to the high value expectation and, hence, affect their decisions to release lands for development (Lots 7, 26, 28, 30, 38 and 40).

Besides higher compensation expected from the acquiring authority, landowners are also asking for high prices from the corporate buyers (Owners of Lots 2, 3, 4, 5, 6, 7, 8, 12, 13, 28 and 40). According to the owners of Lot 28, the reason for refusal to sell or to participate is the lower prices offered by the potential buyers. Even though, there are corporate bodies who are able to offer high prices to the landowners, they are responsible for their

shareholdings and are not willing to offer high prices which may in the end push the general level of prices higher (Tengku Marwan, 1997). This means that the issue is the economic feasibility of a project based on the land price which may affect the decision to buy high priced land for development purposes.

In contrast, the attitudes of landowners of developed sites' toward selling or development are shown in Figure 4. Most of the landowners of developed sites are the corporate owners and have purchased the land for development or for their own use. The objective of purchasing these sites indicate their investment intentions which affect their attitudes toward selling and land development. Four landowners of developed sites are reluctant to sell their properties because the properties were developed for own uses and they enjoyed the increase in values. In contrast, five landowners of developed sites are willing to sell their land if the price offered is at certain expected levels. Interestingly, landowners of seven lots are willing to develop their lands and have applied for planning permission to undertake commercial projects. These lots are all to be developed involving amalgamation procedures.

Landowners of developed sites/applied to develop	Sites (Lots)	Main reasons for purchasing, developing or refusal to sell
Unwilling to sell	5(34, 35, 36, 37, 39)	Own occupation, use, trading, capital appreciation, enhance and preserve values
Willing to sell with conditions	5(10, 32, 33, 38, 40)	Asking high compensation or high price, suitable type of land development
Applied for planning permission	7(19, 20, 21, 24, 25, 27, 29)	Add value, supply to meet demand, capital appreciation and rental growth

Figure 4: Landowners of developed sites' attitudes
Source: Ismail (1999)

In general, landowners can be grouped as active or passive (Adams and May, 1991). Active landowners are willingly responsible for selling their land or taking part in the development by way of taking action to amalgamate their contiguous lands. Figure 4 shows that there are two active corporate landowners with five sites who have amalgamated the sites and have applied for planning permissions (Lots 19 and 20, and 21, 24 and 25), an active co-operative landowner with two different sites who has applied for planning permission without

amalgamation of the sites (Lots 27 and 29) and landowners who have already undertaken physical development and construction of buildings (Lots 10, 33, 34, 35 and 37).

Passive landowners, on the other hand, refused to sell their land, therefore, restricted the land from being available in the market for development purposes. Figure 3 shows that there are eleven passive landowners of undeveloped sites who have reasons including price, financial and planning constraints. But some landowners who refused to sell or to develop their land may be active since they investigated development but decided to hold out for a better price or waiting for a suitable time to undertake development. Figure 3 shows that five landowners of undeveloped sites who are holding the sites for better prices (Landowners of Lots 7, 18, 22, 23 and 31). There are also seven passive multiple non-corporate landowners who have reasons for using the land for own-occupation and/or having commitment with family tenants and, therefore, had refused to sell or to develop their lands (landowners of Lots 1, 5, 8, 9, 10, 11 and 13). There are also five landowners who have reasons to occupy the site and, thus, had refused to initiate the redevelopment (Lots 1, 5, 7, 9 and 30). Landowners of seven undeveloped sites are willing to compromise and come together to participate with land developers but there are problems with adjacent landowners who are reluctant to sell or participate in the amalgamation of sites. As a result, there are seven undeveloped sites with the problems of non-contiguities to amalgamate small lots and contributed to difficulties for commercial redevelopment (Lots 18, 22, 23, 27, 28, 29 and 30).

5.0 Landowners' decisions to supply land – a way out.

At present, if the Government compulsorily acquires MAS land, there is no Valuation Tribunal to which the owner can appeal if it is felt that the compensation is inadequate. Instead, the owner may appoint a private valuer as an independent expert witness in court case to determine the amount of compensation.

Owing to the landowners asking higher compensation payment as in the 1991 redevelopment proposal, it is suggested to set up a special Indigenous Land Tribunal by related government

bodies to deal with the landowners. The objective was to resolve the price difficulty by explaining to the affected landowners the reason for the level of prices for compensation.

In determining the compensation to the affected landowners, the amendment to Schedule 2 of the Land Acquisition Act (1960) which considers the restriction in interests should be reviewed (so that the value of the land is to be determined at its open market value). The main reason of this suggestion is to avoid landowners' refusal and to invite them to participate. Additionally, since the MAS areas are the Malay settlement areas, the purpose of land acquisition of sites (even though for a road widening scheme) would be for the benefit of the Malays in the areas.

In the negotiation on the valuation matters, various parties may participate such as the valuers at the Valuation and Property Services Department and the Department of Property Valuation and Management of the Kuala Lumpur City Hall and such private valuers as may be appointed by the affected landowners (Nang, 1997; Salleh, 1997). With reference to valuation constraints, the proposed Indigenous Land Tribunal would be responsible for dealing and negotiating the fair price of land as compensation to the affected landowners.

Alternatively, the award of compensation could be negotiated with the affected landowners as in the form of substituted land at a similar price around Kuala Lumpur. This alternative method of compensation was suggested by landowners of Lot 2, 5, 8, 16 and 26 during the interviews. However, the problems with this substitution of land as a method of compensation is that some landowners, who are occupying, have inherited and would like to bequeath further the land, may refuse to move out of the sites. In addition, there is a scarcity of urban land with development potential in Kuala Lumpur. Otherwise, land at the periphery of Kuala Lumpur such as in Bangi New Town, Sepang or Putrajaya could be considered for substitution and subject to negotiation with the affected landowners. The advantage of substitution of land as an alternative to the payment of compensation is that landowners who are occupying the sites can be temporarily accommodated and the loss of rental (if the affected landowners rented out their property) can be compensated accordingly as provided under the Land Acquisition Act (1960). Alternatively, costs incurred by the affected

landowners during the temporary accommodation period would also be compensated accordingly.

The enforcement and implementation of these land acquisition rules in a proper and negotiable manner may limit refusal to co-operate and expectations of higher values of lands by the affected landowners (Mohd Syed, 1997). In contrast, as happened during the 1991 redevelopment proposal, the 'inappropriate strategies' taken by the government to acquire compulsorily the MAS lands for a massive high-rise development was seen as an improper way of acquiring the indigenous lands from indigenous landowners for indigenous land redevelopment (Ismail, 1997; Mohd Syed, 1997).

As the expectation of higher price or compensation for their land is part of human nature in land dealings, a negotiation among parties involved may offer a compromise on the development of the MAS areas between vendor and seller. To ensure a smooth land dealing, a special unit could be established under the Kuala Lumpur City Hall (as the proposed Indigenous Land Tribunal) to educate, provide information about land matters and land values to help owners undertake negotiation. With the assistance of the MAS Board of Management, a list of all registered landowners can be identified and updated for a series of meetings with other interested parties. In the negotiation to establish land dealings, landowners can appoint their own private valuers, property consultants or estate agents to negotiate with the land developers. However, attempts and efforts can be made to initiate land dealing and supply for development but the final decisions are in the hands of the landowners. In this proposal, again, the proposed Indigenous Land Tribunal could play an important role in the negotiation among landowners and other agents to supply land for development in the MAS areas.

6.0 Conclusion

Since institutions affect agents' decisions and their economic performances (Krabben, 1995; North, 1996), the review and evaluation of these influential rules need to be carried out from time to time. In the case of restrictions in interest which influence the supply of indigenous

land for development purposes, the amendment to the valuation principles for compensation purposes need to consider agents' responses towards the enforcement and implementation of such formal valuation rules. Therefore, amendment on the valuation rules for compensation needs to be undertaken by considering landowners' responses to the rules. Moreover, the proposed Indigenous Land Tribunal may provide solutions to the problems of landowners' behaviours toward accepting the amount of compensation offered to them. As a conclusion, formal and informal constraints need to be considered as strategies for future actions involving an integrated and holistic approach to redevelop the indigenous land with restrictions in interest. Thus, the proposals to further amend the valuation for compensation form part of the institutional change to redevelop the indigenous land and, may strengthen land reform and policy in the country.

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