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**DISCREPANCY IN DETERMINING THE AMOUNT OF ADEQUATE
COMPENSATION FOR LAND TAKEN IN LAND ACQUISITION
PROJECTS – A CASE STUDY IN MALACCA WITH REFERENCE TO THE
LAND ACQUIRED FOR KOLEJ UNIVERSITI TEKNIKAL KEBANGSAAN
MELAKA**

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UNIVERSITI TEKNOLOGI MALAYSIA**

2007

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DEDICATION

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Abstract

This research reviews the concept of adequate compensation in land acquisition. The definition of 'value to the landowners' is closely related to the real meaning of adequate compensation with reference to heads of claims in land acquisition. It also examines the practical application of valuation practices in determining adequate compensation to affected landowners. The main focus is on the aspect of the way in which affected landowners are expecting their worth of land and property interests in the open market. It concentrates on the overall perceptions of the affected landowners. Data is gathered from valuation reports prepared by private and public valuers and documents from land administrators in the case study in Melaka. Then, data will be analysed using qualitative analysis to show the differences in the valuation prepared by valuers and awards granted by land administrators. The findings show that there are differences between values determined by private and public valuers and award granted by land administrators. The differences are due to the factors considered in the valuation for compensation that influence the acceptance of the landowners to supply the land for development in the case study areas. Hence, further ways and means to smoothen the supply of land for development are inevitably important to make more potential land available for public purpose development.

Abstraks

Penyelidikan ini mengkaji konsep pampasan yang mencukupi dalam pengambilan tanah. Definisi “nilai kepada tuan tanah” berkait rapat dengan erti sebenar selaras dengan tuntutan-tuntutan yang boleh dibuat oleh tuan tanah kepada pihak kerajaan. Kajian ini juga menyentuh aplikasi dan amalan penilaian tanah dalam pengambilan tanah bagi menentukan pampasan yang mencukupi kepada tuan tanah yang terlibat. Aspek utama yang diberi perhatian adalah tanggapan tuan tanah terhadap nilai tanah mereka di pasaran. Terutama sekali persepsi keseluruhan mereka. Data dikumpulkan laporan dan nilai penilai kerajaan dan swasta dan juga dokumen-dokumen pentadbir tanah di Melaka. Analisis data secara kualitatif yang menunjukkan perbezaan antara nilai penilai swasta, penilai kerajaan, pentadbir tanah dan award yang diberikan kepada tuan tanah. Kajian menunjukkan bahawa perbezaan yang wujud adalah disebabkan faktor-faktor yang diambil kira dalam penilaian pampasan dan seterusnya mempengaruhi penerimaan tuan tanah untuk menawarkan tanah mereka untuk maksud pembangunan awam. Oleh yang demikian, penilaian yang lebih cekap dalam menangani pampasan tanah adalah perlu supaya penawaran tanah dapat dibuat untuk maksud pembangunan awam.

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LAA 1960	Land Acquisition Act1960
Consortium	Consortium Kumpulan Melaka Berhad, Putra Perdana & Cobrain
NLC 1965	National Land Code 1965
KUTKM	Kolej Universiti Teknikal Kebangsaan Malaysia
MRL	Malay Reservation Land
EPU	Economic Planning Unit

CHAPTER 1

INTRODUCTION

1.1 Introduction

Land acquisition is one of the important elements in the land development process. The process of land acquisition provides a legal procedure for the public sector in acquiring any land for development projects that benefits the country. However, the land acquisition should be for the public purpose and thus in lined with the provision of Section 3 (1) (a), (b) and (c) of the Land Acquisition Act 1960 (LAA 1960).

The concept of “public purpose” has a wide definition. Some development may be classified as for public purpose, but it does not mean to be used by all type of public. Through land acquisition process, the public sector would not face problems such as inconveniency in providing land to be developed.

Salleh Buang in Lian Thim Pooi (1998) says that the provision of LAA 1960 is as to be used as the legal document, providing a complete legal procedure to allow the public sector to acquire land for the purpose of development. Thus, it is in lined with the provision in the Article 13 of the Federal Constitution pertaining to the individual rights on private properties and the provision of the National Land Code 1965 (NLC 1965). Article 13 of the Federal Constitution provides that :

- “(1) No person shall be deprived of property save in accordance with law.*
- (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation”*

The provision of Article 13 of the Federal Constitution guaranteed individual rights onto their private properties. However, there is also a provision in the Federal Constitution which stated that there are some ways that can be taken in denying ones rights onto their private properties which is through the legal procedures. But, in

order to acquire any private property, a compensation, which must be equal to the value of the property, must be given to the owner.

Award of an adequate compensation amount has a wide definition. It depends on some surrounding and related elements such as court verdict, administration practices and orders from the State Authorities. Thus, there will be some value discrepancy between the amount required by the landowner and the value to be awarded by the legal parties. The discrepancy of compensation amount happens when the application valuation practices being used by both parties are different.

However, if State Authorities should take any action pertaining to the land acquisition from the landowner, the State Authorities should comply all related provisions stated in the LAA 1960 to ensure that any action taken is legal and can be accepted from the legal side.

Besides that, Para 2A of the First Schedule of LAA 1960 stated that the compensation amount for Malay Reserved Land (MRL) must be made based on the current value of surrounding land, without considering any restrictions applied onto the land, in case the land acquisition is to provide land for everybody's uses (Nik Mohd. Zain, 1993). The provision is enforceable since 20th January 1984 and includes the customary land and Malay-hold land as well. Thus, Mohd. Nazri (1997) says that the ordinary method of valuation which assuming that MRL and customary land should have a less value than any other land cannot be used especially in the above cases of the land acquisition process. In contrast, it would be different if the MRL is acquired as to develop any types of development which is solely benefits to certain persons or only the Malays such as the development of mosque.

1.2 Problem Statement

There are some issues arise pertaining to land acquisition. One of the main issues is the discrepancy of compensation amount between the amount asked by the landowner and the amount valued as compensation by the land offices. The existence

of the discrepancy will then lead the landowner to bring their dissatisfaction to the court in order to get the amount of compensation required.

This scenario could give some negative impact on the land administration system. Besides the negative perspective, the public would also question on the credibility of the State Authority in doing land acquisition. The public would assume that the State Authorities are not efficient and effective by paying low compensation amount for the land acquired. Besides that, the amount of court cases on dissatisfaction of compensation amount will increase, while this problem can be solved if the compensation amount requested by the landowner can be paid at the Land Office or the Land and Mining Office level. Therefore, the process will not be complicated as well as satisfying the landowner.

Thus, a study has to be done to determine the cause and factors of the discrepancy of land valuation for land acquisition projects. Based on the elaborations on the factors, the result of this study will hopefully helps to decrease the discrepancy of land valuation for land acquisition projects.

1.3 Objectives

The objective of this research is to study the sources of discrepancy of the amount of compensation between the landowners as the payee and the State Authorities. Other objectives of this study are :

- i. To study the method of valuation and factors considered in determining the amount of compensation
- ii. To determine the discrepancy of compensation between Public Valuer, Private Valuer and Award.

1.4 Scope Of Study

No specific study on the discrepancy of compensation amount has been done before. Some existing study on compensation does not study the factors that cause the discrepancy. Therefore, a specific study on the discrepancy of compensation amount which to be paid to the landowners especially in the land acquisition projects has to be done. The main reason is that every time a land is acquired for public purpose, there will always be a discrepancy on the amount of compensation given.

The scope of this study focuses on the discrepancy of compensation amount received by the respective landowners whose land are acquired for the development of Kolej Universiti Teknikal Kebangsaan Malaysia in Ayer Keroh, Malacca.

Analysis will be done as to determine how the discrepancy happens between the amount claimed by the landowners and the amount paid by the legal parties. The discrepancy will be shown in form of total, percentage of discrepancy, factors of discrepancy and the valuation method used by both parties. The study will also discuss on the process of land acquisition and focuses on the compensation amount to be paid to the landowners.

1.5 Methodology

A systematic and effective methodology must be used in order to achieve the goal and objectives of this study. It is important to use a systematic methodology especially to gather and analyze all data effectively as to get the best result at the end of this study. Data as needed for this study will be gathered from :

- i. Land Acquisition Unit of Malacca Lands and Mines Office
- ii. Lands and Mines Director Office of Malacca
- iii. Related rules and regulations such as :
 - a) Federal Constitution
 - b) National Land Code 1965 (NLC 1965)

- c) Land Acquisition Act 1960 (LAA 1960)
- d) Other related laws and regulations

Specifically, the methodology of this study is as follows :

1.5.1 First Stage

In the early stage, study begun with the formulation of goal, objectives, problems identification and the importance of this study. Some secondary data from books and the internet also gathered at this early stage.

1.5.2 Second Stage

The second stage of this study is to gather all the data needed from both primary and secondary sources. There are two types of data needed which is primary data and secondary data.

i. Primary Data

Primary data is the raw data. The data is gathered through interview session, discussions, site visit and field survey.

ii. Secondary Data

Secondary data is gathered from reading materials such as books, journals, newspaper cuttings, magazines and other related sources.

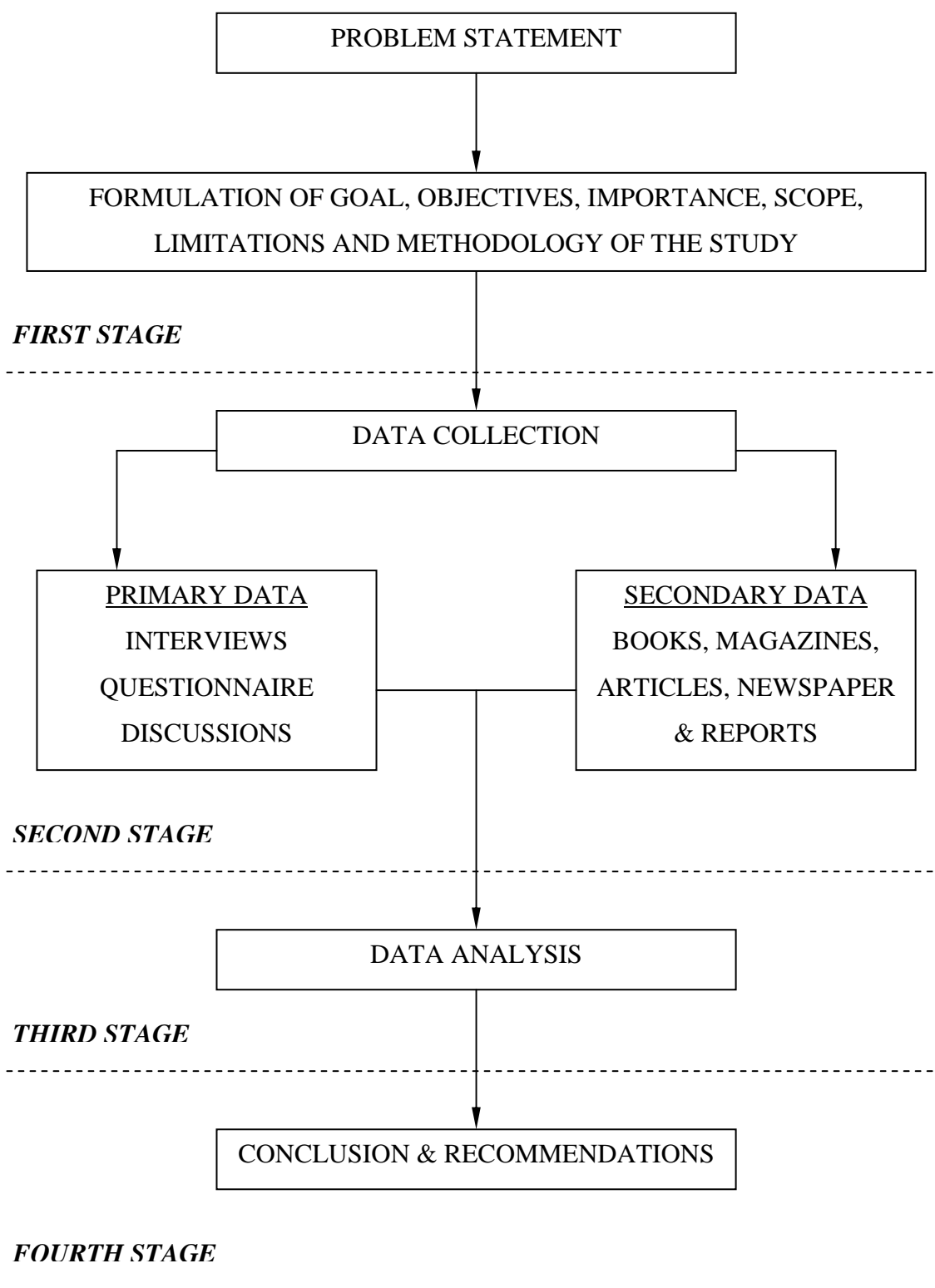
1.5.3 Third Stage

Data gathered from the Second Stage will be analyzed at this stage. The analysis will be done using appropriate software and techniques. All data that has been analyzed will then be edited.

1.5.4 Fourth Stage

The final stage of this study will conclude the whole study. The conclusion will be based on the findings and result of data analysis. Some recommendations will also be suggested at the end of this study as to overcome and improve the main problem of this study on the discrepancy of valuation of compensation amount for land acquisition projects.

As in whole, the chart of the methodology used for this study is shown in the Figure 1.1 below :



Source : Researcher's Elaboration, 2005.

Figure 1.1 : Methodology Chart

1.6 Chapter Arrangement

This study consists of five chapters. These chapters are arranged accordingly from the early stage until the final stage of the study in order to ensure the achievement of the goal of this study.

1.6.1 Chapter One

The first chapter of this study consists of the early stage of the study. This chapter consists of background of the study, problem statement, and formulation of goal, objectives, scope, methodology, and the importance of the study.

1.6.2 Chapter Two

The second chapter of this study will cover the theoretical part of the study. All data in this chapter are secondary data gathered from related reading materials. This theoretical part of the study will discuss on land acquisition pertaining to the purpose of land acquisition, principles, procedures and the compensation which has to be paid to the landowner as well as the importance of the LAA 1960.

The importance of the LAA 1960 will be discussed through some explanations and elaborations on its provisions pertaining to land acquisition projects and compensation amount.

1.6.3 Chapter Three

The third chapter will discuss on the principles of valuation method used to determine the amount of compensation, existence of the discrepancy of

compensation awarded and related parties in land acquisition process and procedures. Discussions will also include the process of land valuation from the early stage until the awarding stage of Land Administrator.

Besides that, this chapter will also discuss on the method of valuation in determining a 'adequate compensation'.

1.6.4 Chapter Four

Discussions in this chapter will be focused on the case study which is a development of a higher learning institution located in Ayer Keroh, Malacca named Kolej Universiti Teknikal Kebangsaan Malaysia (KUTKM). Discussions will encompass site background, land lot involved for acquisition as well as the background of the project.

The existence of discrepancy of compensation amount will be justified through discussions on the case study. Site visits, field survey and interviews with parties involved; such as the Land Administrator and landowners will done through this stage. Data and information gathered will the be analyzed and the findings will be considered as the basis for the formulation of recommendations at the end of this study.

1.6.5 Chapter Five

This chapter is the final stage of this study. Conclusion and recommendations will be formulated based on the findings and result of the whole study.

CHAPTER TWO

PURPOSE OF LAND ACQUISITION AND NEEDS OF COMPENSATION PAYMENT

2.1 Introduction

Land Acquisition Act 1960 (LAA 1960) is the medium for land acquisition. Provisions in the LAA 1960 provided legal procedure for the public authority especially the State Authority in acquiring any land for any public purpose development. Land acquisition by the State Authority would also be the best choice rather than selling the land to the private developer as for the public purpose development.

Under the LAA 1960, any land acquired by the State Authority will then be State Land and it should have no conditions or restrictions applied onto the land. Specific provision for acquisition of land can be referred in the Section 3 of the LAA 1960. Section 3 of the LAA 1960 stated that the State Authority may acquire any land which is needed :

- i. For any public purpose (may not be argued) as stated by the Judge Hakim Hashim Yeop A. Sani in the *S. Kulaisingham & Anor. vs. Commissioner of Land Territory & Ors. (1982) case 1 MLJ 204* (Noor Azli, 1998);
- ii. By any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
- iii. For the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purpose.

With the existence of the LAA 1960, no body may question the process of land acquisition by the State Authority. LAA 1960 has clearly stated a legal process and procedures that allows the State Authority to do so.

However, the authority would not use any approach of land acquisition which could give a bad impact to the landowner. In land acquisition matters, a uniformed procedure is provided as to ensure that the acquisition may not give any bad impact to all parties involved.

One the main purpose of LAA 1960 is to overcome such problem of some disincline landowner to surrender their land to the State Authority even a higher amount of compensation would be paid to them. Besides that, LAA 1960 would also elude the imposition of any conditions or restrictions onto any acquired land. Other than that, LAA 1960 also helps in allowing any development for the purpose of public being developed without any intervention as well as to overcome other problems relating to lease and easement.

Mohd. Nazri (1997) says that LAA 1960 has been amended for several times since 1960. Some of the amendments made are such as through LN 477/1965, PU(A) 515/1969, Act A49, PU(A) 81/1974, PU(A) 184/1975, Act A216, Act A336, Act A387, Act A388, Act A575 and Act A804. The latest amendment of LAA 1960 was done in 1999 and it is known as Act A999. All amendments were made as to strengthen the act in order to ensure that all provisions stated would be applicable due to current circumstances from time to time.

Therefore, amendments has to be made from time to time as to ensure that all provisions in LAA 1960 can be used due to the change of development scenario in Malaysia. Amendments and improvement onto LAA 1960 would also ensure the effectiveness of the act to overcome any related problems.

Briefly, the main purpose of LAA 1960 is to overcome any related problems and issues such as :

- i. Reluctance of landowner surrendering their land when it is acquired by the legal authority.
- ii. Invalidation of any conditions or restrictions which is against the use of scheduled land.
- iii. Allowing any development projects without any constraint from the legal aspect.

2.2 Land Acquisition Act 1960 (LAA1960)

Land Acquisition Act 1960 (Act 486) (reviewed on 1992) which is amended according to Act No. 34; affected on 13th October 1960 is based on Land Acquisition Act of India 1894 (Mohd. Nazri, 1997). The amendment of LAA 1960 was done as stated under provision of Article 76 (4) of the Federal Constitution. However, before the existence of LAA 1960, there were some acts have been applied in Peninsular Malaysia since 1911 pertaining to land acquisition (Hazman, 1998).

In year 1911, land acquisition was done according to the Land Acquisition Ordinance or the Land Acquisition Enactment. Land acquisition in that time was done by the State Authority for any purpose of development. Thus, the implementation of land acquisition was wholly in the hand of the State Authority.

According to the chronology of law legislation in Peninsular Malaysia, there were eight type of legislations being used by the State Authority in acquiring land according to each state before the existence of LAA 1960 (Hazman, 1998). These legislations allow the State Authority to acquire any land in their States for the purpose of development. The legislations are :

- i. Johore Land Acquisition Enactment, 1936.
- ii. Federated Malay States Land Acquisition Enactment.
- iii. Kedah Land Acquisition Enactment (No. 57).
- iv. Kelantan Land Acquisition Enactment (replacement of the Land Continuation Enactment, 1913 (No.7 Year 1913).
- v. Perlis Land Acquisition Enactment (Extension of Perlis State) 1958.

- vi. Land Acquisition Ordinance (Extension of Terengganu State) 1952.
- vii. Perlis Land Acquisition Enactment for the Use of Train, 1932.
- viii. Malay Straits States Land Acquisition Ordinance

Since there was no uniformity done onto land acquisition legislation thus, there were too many legislation being used in the former time. As the implication, there were some serious problems occurred such as land acquisition for the development of highway network across the whole Peninsular Malaysia. With every State having their own land acquisition legislation each thus, the development of such project would face problems of gathering numerous land lots.

Thus, the existence of LAA 1960 has done a lot of uniformity and improvement in land acquisition matters.

Meanwhile, Sabah and Sarawak state have a different legislation pertaining to land acquisition. Sabah has its own land acquisition legislation which is cited as Sabah Land Acquisition Enactment 1950 (Cap 69), while Sarawak also has it's own legislation cited as Sarawak Land Code (Cap 81).

2.3 Land Acquisition Procedure

Land acquisition procedure has been uniformed for the whole Peninsular Malaysia with the existence of LAA 1960. Even though all states in the Peninsular Malaysia are adopting the law, however the way of how it is implemented would be different according to each state. According to the provision of Section 3 (1) of the LAA, procedures of land acquisition for every state should include:

- i. Application, examination and endorsement
- ii. Investigations and orders
- iii. Compensation payment
- iv. Acquisition
- v. Court referring
- vi. Tax amendment and provision of title

Every application of land acquisition must be done by filling some related forms as stated in the *Pekeliling KPTG 2/79*, where the format of the form are all uniformed. However, any application which is done under the provision of Section 3 (1) (b) and (c), the applicant must use Form 1 of the First Schedule Land Acquisition Order 1998 together with some related documents (Mohd. Azri, 2001).

For certain cases, land has to be investigated before it is acquired to be developed. In such case, Land Administrator should give a public notice as it is stated under the provision of Section 4 of the LAA 1960. As stated in Section 4 of the LAA 1960, public notice has to be issued as to deception in court session of land acquisition. Under Section 4 of the LAA 1960, “Gazette” should be issued in Form A. Land Administrator should then post the notice at several places such as the District Land Office, on public notice-boards in the mukim or township in which the land to which such notification, declaration or document refers, is situated and in such other places on or near the land specified in the notification.

If any detail investigation is needed onto the acquired land, hence the Director of Lands and Mines should issue a permission letter through Form B. Form B allows any respected person or officer to enter the land as to do detail investigation on it. However, they still have to comply every related provision stated in the LAA 1960.

Notification made in Form A will expire after 12 months. However, re-notification can be made if needed. Thus, any action to be taken such as site visit and investigation must be done within given duration which is 12 months. Land valuation done at this stage is very important as to determine the method being used in evaluating respective land.

After notification is made, a declaration has to be made as stated under Section 8 of the LAA 1960. The declaration is important as to inform the public that any land or part of it has been acquired for development. In this declaration procedure provided under Section 8 of the LAA 1960, a paper work must be submitted and approved by the Government Meeting Council (GMC) before it is given to the State Authority. After the approval then the land is approved to be

acquired by the State Authority. Approved paper work from GMC must then be followed by Form C, which contains list of lot number of respected land together with a plan showing the location of the land.

State Authority will then approve the land acquisition and thus make a declaration in Form D according to the provision of Section 8 of the LAA 1960. The declaration will then be shown in government gazette, together with a copy of Form C. Declared Form D will expire after 2 years effecting from its gazette date. Between this two years time, if Land Administrator failed to do site investigation and awarding compensation, nor the State Authority failed to compensate the land, thus the gazette will automatically be invalid. A new application of compensation must be submitted if the State Authority still interested with the land.

After the Form D is declared, Land Administrator has to mark out land which to be compensate as in lined with the provision of Section 9 of the LAA 1960. Land marking has to be done as to facilitate Land Administrator to recognize the land. Land Administrator should then commence proceedings for the acquisition of the land by giving public notice in Form E. Public notice made should fix the date of an enquiry for the hearing of claims to compensation for all interests in such land.

Public notice made by the Land Administrator should comply the provision of Section 52 of the LAA 1960 and should be posted at several places such as :

- i. Related Land Office
- ii. Notice-boards in the mukim or township in which the land to which such notification, declaration or document refers, is situated
- iii. Other places which to the Land Administrator is necessary.

Enquiry date fixed in Form E should not be less then 21 days from the date of the Form E itself. As stated under the provision of Section 12 of the LAA 1960, Land Administrator should :

- i. Enquire the value of all scheduled land
- ii. Assess the amount of compensation should be given to the landowner

- iii. Investigate landowner's interests onto scheduled land and the distribution of compensation.

Under the provision of Section 13 of the LAA 1960, Land Administrator has the power to obtain a written opinion on the value of all scheduled lands, summoning and examination of witnesses, including the persons interested in the land which is subject of the enquiry, the administration of oaths or affirmations, and for compelling the production and delivery to him of documents, including issue documents of title and other documents evidencing title. Related documents are such copy of identity card as the verification of landowner, copy of Form 14A if there is any dealing done onto scheduled land within the acquisition period and appointment letter of attorney or letter of power of attorney.

During the enquiry, Land Administrator should record all information gathered from landowners, interested parties and other appointed representatives. However, there is no specific method for data recording and it is up to the Land Administrator on how to record the information gathered. A complete statement of enquiry is very important to the Administrator especially if there is anybody who disagrees with the amount awarded and thus making an objection to the court.

After the enquiry procedure has completed, Land Administrator should prepare a written award under his hand in Form G. The Land Administrator should make a separate award for each separate area of scheduled land in respect of each person whose interest in the land has been established in such enquiry. Every award prepared by the Land Administrator should be filed in the office of the Land Administrator and should be final and conclusive evidence of the area of any scheduled land, of its value in the opinion of the Land Administrator, and the apportionment of the compensation awarded. Award by Land Administrator should consists of :

- i. Amount of compensation awarded
- ii. Acreage of scheduled land
- iii. Compensation apportionment
- iv. Other related costs and expenses.

Land Administrator should then prepare and serve the award in form of notice in Form H to each person interested in such land. Every notice in Form H should include an extract from the written award of the Land Administrator in Form G, relating to the land in which the person to whom such notice is addressed has an interest.

Landowners or interested parties who receive the award notice have the choice either to accept, accept with objection or protest the award. Matters which can be objected are:

- i. The measurement of acquired land
- ii. The amount of compensation to be awarded
- iii. The persons to whom it is payable

As for the agencies who acquire the land, they have only two choices, which is either to accept or protest the award.

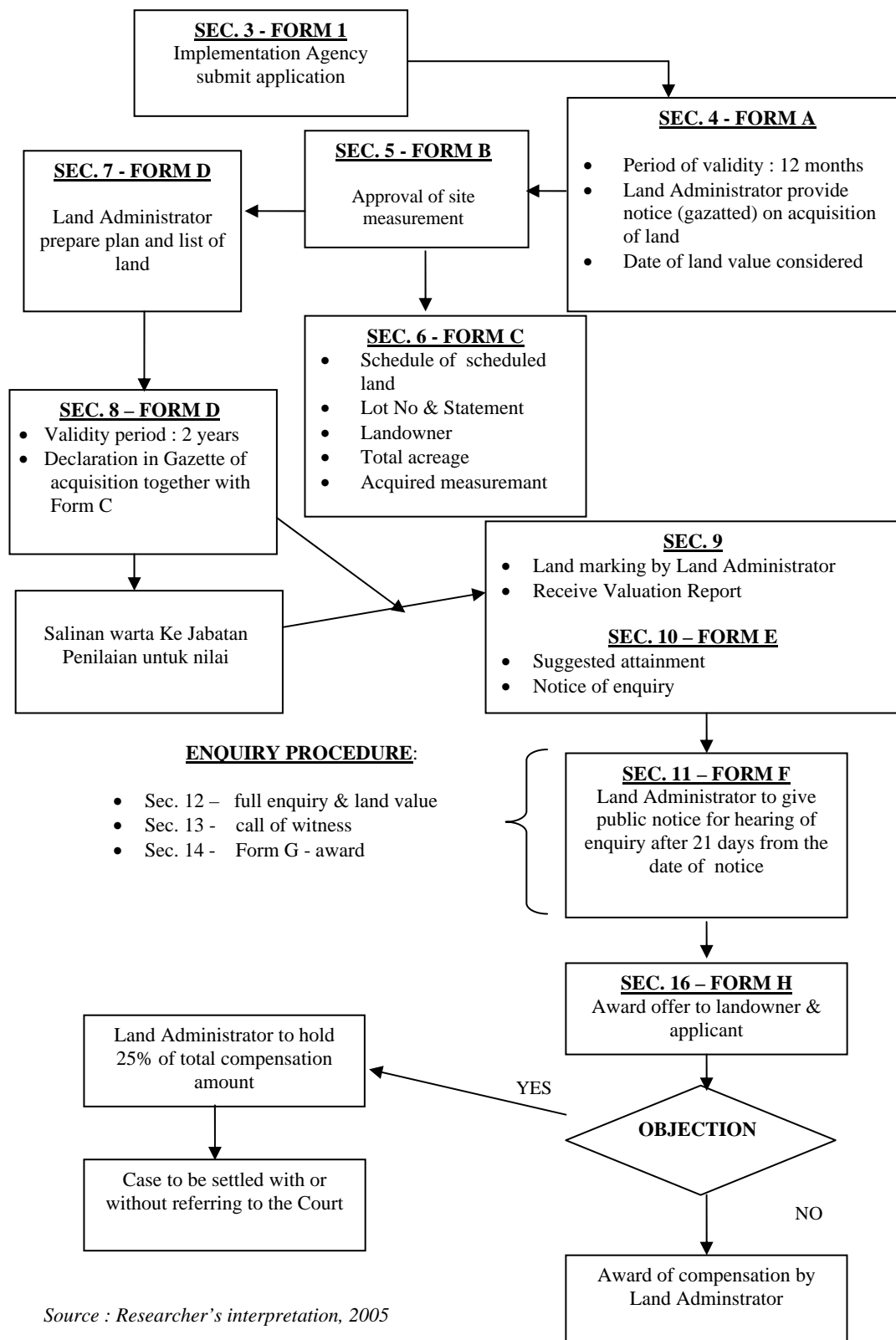
Through normal practice, Land Administrator would inquire for agreement from both agency and interested parties before awarding the compensation amount. Discussion with both agency and interested parties is held as to seek early opinion from both parties on the amount of compensation to be awarded. However, the final amount would be awarded by the Land Administrator without any prejudice until the Form H is submitted.

If any or both parties protest the amount of compensation to be awarded, thus Land Administrator would hold 25% of the total amount to be awarded. It is in lined with the provision of the LAA 1960 as to secure the party which protest the amount to be awarded. However, objection can only be made if the offered award is not less than RM3,000.

Fro example, if the amount to be awarded by Land Administrator is RM100,000 and interested parties protest the amount, thus Land Administrator would only pay RM75,000 to the interested parties and the balance amount which is

RM25,000 would be hold by the court until the whole case is settled. During the enquiry, if there are no interested parties or they were absent, thus the amount of compensation would be deposited to the High Court. This kind of decision is made through ex-parte. If the interested party is no longer alive, thus the compensation would be paid to the *Amanah Raya*.

Figure 2.1 below shows the procedure of land acquisition :



Source : Researcher's interpretation, 2005

Figure 2.1 : Land Acquisition Procedure Chart

2.4 Necessity of Compensation Payment

Implementation of land acquisition and payment of compensation must comply with the provision of LAA 1960 in order to ensure the procedure taken is legal. Otherwise, land acquisition by authorities can be challenged by landowners as violation of human right to the landowner under the provision of Federal Constitution.

2.4.1 Federal Constitution

Federal Constitution is the basic regulation of all acts and regulations in Malaysia. Thus, all laws and legislations must be in lined with the provisions of the Federal Constitution. Any legislation which is contradictory to the Federal Constitution is considered as illegal. Article 13 of the Federal Constitution provides that :

“(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation”

The provision of Article 13 of the Federal Constitution guaranteed individual rights onto their private properties. However, there is also a provision in the Federal Constitution which stated that there are some ways can be taken in denying ones rights onto their private properties which is through the legal procedures. But, in order to acquire any private property, a compensation, which must be equal to the value of the property, must be given to the owner.

Compensation has to be given to the landowner for land acquisition case only, while no compensation need to be paid for land possession case.

Payment of compensation is done with consideration on several elements such as interpretation of related laws, court decision, administration practices and orders from the State Authority.

“Adequate compensation”, as stated under the provision of Article 13 (2) of the Federal Constitution refers to amount of compensation which is decided with considering all principles stated under the First Schedule of the LAA 1960. Even though the State Authority, under the provision of LAA 1960, has the power to possess any private land, however it does not allow the authority to violate one’s right onto their private properties.

Besides that, Para 2A of the First Schedule of LAA 1960 stated that the compensation amount for Malay Reserved Land (MRL) must be made based on the current value of surrounding land, without considering any restrictions applied onto the land (Nik Mohd. Zain, 1993). The provision is enforceable since 20th January 1984 and includes the customary land and Malay-hold land as well.

Thus, Mohd. Nazri (1997) says that the ordinary method of valuation which assuming that MRL and customary land should have a less value than any other land cannot be used especially in land acquisition process. However, it would be a different if the MRL is acquired as to develop any types of development which is solely benefits to persons or only the Malays such as the development of mosque or Muslim’s graveyard. However, if the MRL land is acquired for public purpose development such as development of highways, thus the value of MRL land should be in the same value as other type of land.

2.5 Valuation

Valuation need to done as to determine the amount of compensation to be paid to the interested parties especially in land acquisition cases. Even though there are other ways can be used in determining the amount of compensation such as arbitration and negotiation, LAA 1960 has stated that evaluation of compensation amount must be done through valuation. Compensation determination should consider the value of land itself and any other loss or damages due to the acquisition.

Valuation is the only method can be used for compensation claim in land acquisition projects. It is the art and science of estimating the value of property.

Valuation is done at one time considering several factors such as statement of property, economic, legal and social factors.

Valuation process covers estimation of land value for a particular purpose at one particular time. As for land acquisition projects, valuation need to be done as to ensure that all interested parties would get adequate compensation for the land acquired besides any loss or damages they face.

Evaluation has to be done by a valuation expert. Basically, an expert valuer should has expertise such :

- i. Has a good knowledge on land matters and property characteristics such as land form and any construction on the land. An expert valuer should also has good knowledge on ones right onto their private land.
- ii. Has a wide knowledge on value, price and current property market situation, increase of land restrictions such as land use, lease and status of title provided by the authority. In such case, valuer should do detail valuation to identify the impact of those factors onto land value.

As for land acquisition, the valuer should not only evaluate land due to its value in the current market, but also any loss or damages faced by the interested parties. Compensation has to be paid to the interested parties in form of money.

2.6 Conclusion

Payment of compensation need to be done in order to ensure that land acquisition has been done legally. Land acquisition is one of government way to allow a public purpose of development to be done smoothly. Always, there are many problems faced by the government in acquiring any site as to develop some projects such as the development of 'Kolej Universiti' and for other public purpose of development. This problem could be solved with the existence of LAA 1960.

CHAPTER THREE

COMPENSATION AMOUNT DETERMINATION

3.1 Introduction

In order to ensure land acquisition is done legally, thus an adequate compensation amount must be paid to the interested parties. Payment of adequate compensation is the most important level through all the process of land acquisition, whereby at this level the interested parties will be paid for all loss and damages they face due to the acquisition. Besides that, the authority who acquires ones land would know the amount they need to pay to the interested parties at this level.

Payment of compensation to the interested parties must comply with the illegal procedures as stated under existing law as to ensure that the procedure would not be contradictory with the provision of Article 13 of the Federal Constitution and LAA 1960.

These two legislations are the main legislation which has to be complied as to ensure all interested parties will get paid for all their loss and damages.

3.2 Compensation Amount

Amount of compensation is the amount awarded by the Land Administrator to the interested parties. However, in a case of compensation claim for land acquisition projects, landowners and interested parties would normally hire a private valuer to evaluate the value of their land according to the current land market value. Amount of compensation covers cost of acquired land, contingency cost and loss due to the acquisition.

The authority who acquires the land should come during court hearing. Besides the fact that the authority is the one who need to pay the compensation amount, there might also some question need to be answered by them during the hearing.

3.3 Parties Involved in Land Acquisition Process

There are several parties involved in land acquisition process. As for the case for this study, the development of KUKTM is a project by Federal Government and the agency who responsible is Education Ministry of Malaysia, which is now under the Ministry of Higher Education. Because the development of KUKTM is a Federal Government project, it means that all the cost involved in this development comes from Federal allocation and budget. This project starts with early planning by the Education Ministry and submission of acquisition plan and related information to Malacca's Lands and Mines Office as to start the acquisition process. Normally, the acquisition process will also be supported by Malacca's Works Department, which is one of the departments under Ministry of Works.

3.3.1 Public Agencies Involved

Works Ministry of Malaysia is the public agency who has legal power to do land acquisition for government project in Malaysia. As for such case of the development of higher learning institution in Malaysia, Education Ministry would normally ask Works Ministry to find a suitable area and location to place the development. All education-related development such as schools, polytechnics and higher learning institution is under the power of Education Ministry. However, the power to develop those institutions is still in the hand of Ministry of Works. This agency could also hire other consultants and contractors in order to do the construction.

In developing an education institution such as KUKTM, Ministry of Works has to have a discussion with the Economic Planning Unit (EPU) as to decide on

some matters such as where is the best location, costs involved and thus the process of land acquisition. It is very important to get the approval of developing any project from the EPU. Every proposed development would be brought to the Government Meeting Council (GMC) before the approval granted from the EPU. Only then a proposed development project is granted to be constructed.

Land acquisition plan which is prepared by the Education Ministry would show the location of land to be acquired. The plan would also show all lots of land involved, boundary of land acquired and early suggestion on which land would be acquired.

3.3.2 Lands and Mines Office of Alor Gajah, Malacca

Land Administrator is the person who responsible to process land acquisition application. After a declaration made in Form D as stated under the LAA 1960, Land Administrator within 21 day from the date of declaration has to make a notice to inform all interested parties on enquiry of the site involved. Interested parties involved are such as landowner, tenant and lease holder. This proceeding is very important as the Land Administrator would offer an amount of compensation to the interested parties. This proceeding also goes as normally for KUTKM project development in Malacca.

Through normal practices, before declaration in Form D is made, Land Administrator would ask for coordination from related Department of Valuation and Property Services to prepare a valuation report as to determine the adequate amount of compensation to be paid to the related parties.

3.4 Methods of Valuation

There are several methods of valuation which can be used in order to evaluate land value as to determine an adequate compensation amount to be paid for the

acquired land. The First Schedule of LAA 1960 shows that there are several methods can be used by valuers to evaluate acquired land.

The First Schedule shows all elements which need to be considered during evaluation is done. It also guide the valuers on determining time limitation and which elements need to be taken into consideration and which elements to be ignored. This is because land valuation for land acquisition projects is different from other purpose of valuation such as for land dealings, lease or revenue purpose.

Method of valuation chosen by valuers must be suitable for those elements listed in the First Schedule. Scopes of valuation has been clearly defined as to ensure that valuers would do valuation at its best. However, there still some weaknesses in valuation method being used all this while due to implementation and changes of people's need and interest onto land.

The main concept of valuation in determining compensation amount for land acquisition projects as stated under LAA 1960 is "Just Compensation". It is because all related parties would have no right onto their land after the land is acquired.

There 5 traditional valuation methods certified by Valuers, Appraisers and Estate Agents Board of Malaysia. Each method will be used according to its appropriateness to the situation and the use of land involved. However, in land acquisition case, both Private and Public Valuer would normally use the comparison method of valuation in determining the amount of compensation to be claimed or offered.

3.5 Comparison Method

Comparison method of valuation is the most popular method being used in land valuation (Millington, 1982 in Azhari, 1996). This method is based on replacement concept as defined by The American Institute of Real Appraisers, 1973 (Azhari, 1996) which saying that ones would not buy any property at the higher price

than other property at its class. The price paid by a buyer is normally identified after some comparison is being done onto other properties which are in the same class.

In using this comparison method, the property which to be compared with will be identified in the first place. After that, the subject property will be identified based on its price and the characteristics of other comparison property (Azhari, 1996). Logically, the value of a property does not have much different compared to the value of other comparison property. It is because, property owner would not sell their property at the lower price than other property which in the same class of it. But the value of the property should be higher than the value of other comparison property.

A buyer would definitely not paying higher prices for property which has the same lower value with other property. Therefore, the subject property would normally be within the price of its other comparison property. However, there are several criteria to be identified before considering any property to be the comparison property. The main criteria of comparison property must be the same or nearly the same as the subject property (Azhari, 1996). Identification of comparison property consists of :

- i. Type of property
- ii. Location
- iii. Period between date of title transferring and date of valuation
- iv. Land hold
- v. Physical factor

3.5.1 Type of Property

Type of comparison property must as the same as the property to be evaluated. For example, to evaluate a small rubber estate, then the comparison property must be a small rubber estate too. It goes the same to other properties such as buildings.

3.5.2 Location

According to Azhari (1996), location is the most important value identification factor from the valuers perspective. It is because the same category of property would have different value due to its location. Therefore, the comparison property should be taken from the same area with the subject property. If there is no such property in the same place, then comparison property must be taken from some other place with the same characteristics of the subject property's place.

3.5.3 Period between Date of Title Transferring and Date of Valuation

According to the comparison method, the value of one property will be compared to the comparison property which has latest transaction. The best situation would be when the period is shorter. The period is an important thing to be considered in order to ensure that the current property market of comparison method is as the same as the subject property. This is especially during the uncertainty of property market situation.

As for land acquisition case, period of latest transaction allowed is within two years before the date of Gazette. This is in lined with the needs of First Schedule of the LAA 1960. However, there are some properties which are inactive in its title transferring. For example, transfer of title for small rubber estates in the rural area is not as active as for housing or agriculture area in urban area. However, as for land acquisition purpose, element of current market during the gazette must be done properly because the date of valuation is same with the date of gazette. Chapter 3.8.1 discuss further on the determination principle.

3.5.4 Land Hold

Comparison property must have the same land hold as the subject property. It is because land hold would have a great impact on property value. Value for properties with lease hold would be lower than the value of properties with free hold

title. This is because the ownership of land for lease hold is shorter. Besides that, lands with restrictions, such as the MRL land would also have lower value. However, the First Schedule of LAA 1960 has stated that the valuation of Malay MRL land must be made without considering any restrictions applied onto the land as long as the purpose of the development to be developed on the land is for the public.

Because type of land hold would give an impact onto property value, thus the comparison property must be in the same type of land hold as the subject property.

3.5.5 Physical Factor

Both comparison and subject properties should have similar physical factor. For example, for agricultural land, the physical factors are the acreage, type of plantation, land form, topography, age of plantation, maintenance method and others.

If a valuer is to evaluate an oil palm estate which is still in a good condition and with the age of its plantation between 10 and 15 years, therefore the comparison property to this oil palm estate must be as the same as the physical factors as the estate.

3.5.6 Open Market Transfer

In order to ensure that the open market value is attained, thus the details on property transfer must reflect the market. According to Darlow (1983) in Azhari (1996), a transaction is known as open market dealing if it comply with :

- i. Unforced seller and buyer
- ii. Logical period for both seller and buyer to do bargains
- iii. Restriction-free property
- iv. Not considering special buyer
- v. Stability of property market

It is difficult to find comparison property which is similar to the subject property. Generally, it is because every property is unique. For example, terrace houses in a housing area might look same from one to another, however maybe the floor finishing of a house could be different from other houses.

Even though the comparison property would not be the same as the subject property in all aspect, but it can still be compared to the subject property. If there are any differences, thus they must be standardized. Standardization need to be made to standardize the comparison property with the subject property.

3.6 Compensation Determination Principle

An adequate compensation amount does not only refer to evaluated land value. There are several other elements need to be considered. Judge Hashim Yeop A.Sani in the case of *Lembaga Amanah Sekolah Semangat Malaysia vs. Collector of Revenue, Dinding* (1978) 1 MLJ 34 stated that the basis of determination of an adequate amount market value and other factors have been stated Para 2 of The First Schedule of LAA 1960. The judge decision in this case shows that the principles of compensation determination listed under LAA 1960 must be complied by the Land Administrator and also the Court.

There are 4 main principles listed under LAA 1960 on compensation determination, which are :

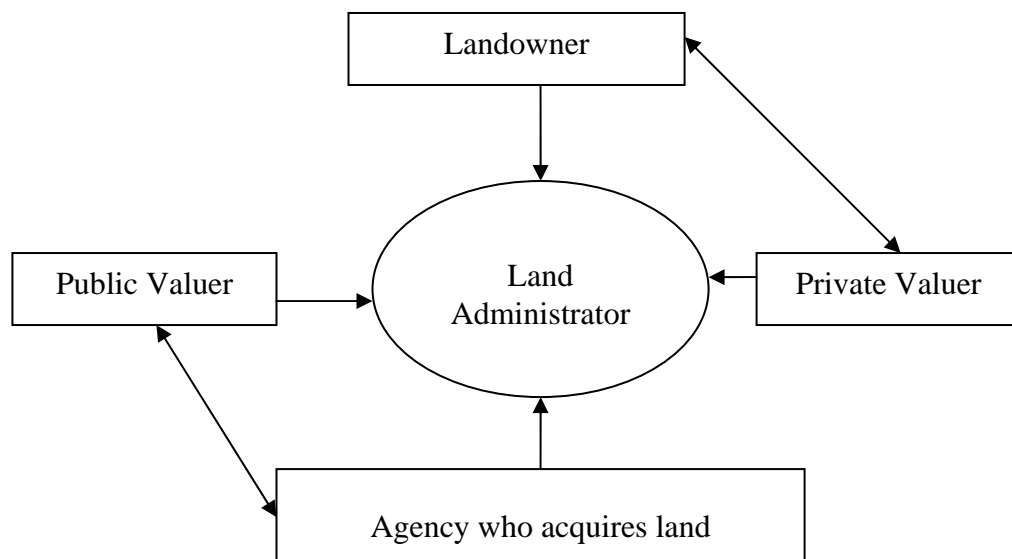
- i. Open market value taken
- ii. Elements to be considered in compensation determination
- iii. Elements to be ignored in compensation determination
- iv. Award reply

The provision under Section 12 (1) of LAA 1960 has stated that Land Administrator should make full enquiry into the value of all scheduled lands and should as soon as possible thereafter assess the amount of compensation which in his

opinion is appropriate in each case, according to the consideration set out in the First Schedule which is the compensation determination principles (Mohd. Nadzri, 1997).

In order to ensure that these principles would reflect an adequate compensation amount, thus there are several parties are needed to determine the amount. Those are the Land Administrator, Public Valuer and Private Valuer. Amendment onto LAA 1960 in 1997 has defined that a valuer is a valuation officer employed by the Government or a registered valuer or appraiser registered under the Valuers, Appraisers and Estate Agents Act 1981.

In general, there are 5 parties who are the related parties in land acquisition process. All these parties are directly connected to land acquisition process. This is to ensure that land acquisition is done legally according to legal provisions, besides protecting interested parties rights onto their land and ensuring that land acquisition process would done smoothly. These 5 related parties are the Land Administrator, Public Valuer, Private Valuer, landowners and the agency who acquires the land. The relationship between these 5 parties is shown in Figure 3.1 below :



Source : Based on Ismail, Aminah and Fahmi (2003)

Figure 3.1 : Relationship of Related Parties Chart

3.7 Purpose of Valuation

Valuation is estimating the value of property importance for some particular purposes. There are some reasons on why valuation is important and the possibilities that there are several values for one property at a particular time depending on the purpose of valuation itself.

As for land acquisition, valuation made is statutory valuation. The valuation is done according to the provisions under LAA 1960. Valuation can be defined as a process of determining market value for one property with considering all related provision stated in current legislations for the property transaction to be evaluated. Therefore, the existing transaction value will be studied according to some contexts needed by the related legislation before any value could be given.

In land acquisition process, there are 2 type of valuers involved, which are the Public Valuer and the Private Valuer. The role of Public Valuer is to assist and advice the Federal, State and Local Government and also the Statutory Bodies on elements relating to the right method of valuation in determining property value. In this situation, the valuers need to determine the compensation amount to be paid (consists of land value and other related costs) according to the provisions under LAA 1960.

Private Valuer is the other valuer besides the Public Valuer, who has expertise in valuation and certified by the government. A Private Valuer is hired by landowner or interested parties to evaluate their loss and damages they face due to the acquisition. Like the Public Valuer, the Private Valuer is also bound to the provisions of LAA 1960.

Based on the Federal Constitution, determination of an adequate compensation amount is defined as “Open Market Value – Current Usage Value”. The basic principle is someone should not lose anything after their land is acquired by the government. It means that “the condition of landowner after the acquisition must be the same with before the acquisition” with the payment of compensation.

3.8 Definition of Market Value

Para (1) of the First Schedule of LAA 1960 stated the provision relating to market value. However, there is no exact definition on market value stated in the First Schedule neither the LAA 1960 itself. Therefore, references onto related books and court decisions on market value definition need to be done.

According to Modern Method of Valuation (1989) in Norhiaty (2001), market value is defined as :

“An interest in land which can be defined as an amount of money which can be realized for the interest at a particular time from the affordable person and willing to buy it”

While American Institute of Real Estate Appraisers has defined the concept of market value as (Norhiaty, 2001) :

Market Value :

- i. As defined by court, it is the highest price estimated in form of money which would be produced by a land if it is opened for sale in the open market by allowing a particular period of time to find potential buyer who is willing to buy with the knowledge about necessary use of the land and rights to use.
- ii. Always, it refers to the price where the seller is willing to sell or the buyer is willing to buy and does not act under an abnormal force.
- iii. It is an expectable price if a logical period of time allowed for buyers and if both seller and potential buyer were fully informed.

As for land acquisition, even lands are acquired through forces from the State Authority but still to follow legal legislations, the seller is considered as willing to sell the land. Always, discrepancy of value happens in the land valuation process. In the case of *Raja Vyrichela vs. Revenue Officer, Vizagapatam* (1914) 3 KB 466 (Norhiaty, 2001), the court decided that the reluctance of landowner in letting go of

his land and the insistence from buyer to buy must be taken into consideration even they were acting under a force through legal legislations.

Market value can also be referred based on several related court cases. For example, in the case of *Nanyang Manufacturing Co. vs. The Collector of Land Revenue Johore* (1654) MLJ 69 (Nadzri, 1997), Judge Buhagian stated that :

“A market value is estimation accepted by a seller who sells his land in his willingness with no element of undue duress in the transaction done. Price which can be accepted is the logical price aspired by a willing buyer. There can also be bargains during transaction. In other word, market value is the price at a time and place where the land is to be sold”.

From the definitions given and the statement of Royal Institution of Chartered Surveyors (RICS) in Guidance Notes on the Valuation of Assets, it could be concluded that market value is one of important concepts and it should consist of several elements such as below :

- i. Willing seller and willing buyer are both do not act under any force or abnormal insistence
- ii. A logical period of time is allowed for bargains on prices with considering factors of current market situation and property's characteristic
- iii. The value is not static along the bargains time whereby in an uncertainty market situation, the value must be in lined with the current market situation during the bargains time
- iv. Land price is free and not restricted to be declared in the market
- v. Not considering special buyer

Market value does not limited to current use of the land, but it also includes possibilities that willing buyer would estimate the benefit he would get if he develop the land in the future. It means that, the landowner does not only bind to the use of the land but also the potential of the land in the future.

Referring to the case of Chuah Say Hai & Others vs. Collector of Land Revenue, Kuala Lumpur (1967) 2 MLJ 99, there are several principles or guidelines which can be used in determining the potential value :

- i. Land cannot be evaluated with the assumption that building has been built
- ii. Possibilities to be happened and possibilities happened must be differentiated
- iii. Potential value must also refer to proofs of transaction in the comparison area

However, the potential of land after the acquisition is done cannot be considered as potential value. For example, an agricultural land is acquired by the government to build public housing on it. Basically, the land has no potential value. Thus, the potential of developing public housing area on the land cannot be considered as the potential value for the land.

This statement is a caused of a case decided by Judge Lee Hun Hoe in the case of Khoo Peng Loong & Others vs. Superintendent of Lands and Surveys, Division Three (1966) 2 MLJ 156, whereby the judge has stated that value of one land must be considered in its original condition, including all its benefits and importance and possibilities but it does not include any benefit caused by the development scheme to be done onto the land.

3.8.1 Principles of Market Value Determination

In order to determine market value to be used in land acquisition, Section 1 (1) of the First Schedule of LAA 1960 has provide several principles to be complied with. Tha main principle is on determination of market value date as below :

- i. At the value of publication in the Gazette of the notification under Section 4, provided that such notification shall within twelve months

- from the date thereof be followed by a declaration under Section 8 in respect of all or some part of the land in the locality specified; or
- ii. In other cases, at the date of the publication in the Gazette of the declaration made under Section 8.

Briefly, in land acquisition process, the date which is considered as suitable date for market value is on the date of Gazette of the notification under Section 4 (Form A) or Section 8 (Form D); which one is more suitable and complying the needs of LAA 1960.

Section 2 of the First Schedule of LAA 1960 also provided that in assessing the market value, the effect of any express or implied condition or title restricting the use to which the scheduled land may be put. Also, the effect of any prohibition, restriction or requirement imposed by or under the Antiquities Act 1976 in relation to any ancient monument or historical site within the meaning of that act on the scheduled land should be taken into consideration.

However, as in lined with the provision of Section 2A of the First Schedule of LAA 1960, the fact that it is such Malay reservation land, a Malay holding, or customary land should not be taken into account. In this case, the factor of limited market has caused these types of land would have a lesser value compared to other land.

Besides that, determination of market value should also refer to the provision of Section 2BA of the First Schedule of LAA 1960. This is to ensure that the market value would also consider every related development plan.

3.8.2 Compensation Calculation

Determination of an adequate compensation amount is not a simple thing to do. It involves various aspects of calculation and valuation. For this purpose, calculation of compensation would normally do by valuers who are accredited and certified by the Valuer, Appraiser and Real Estate Agent Act 1980. Certified valuers

who have the knowledge and expertise in valuation will be registered with the Malaysia Board of Valuers. Normally, these valuers are also known as Private Valuer and will be hired by interested parties as their professional representative in compensation claim. As for the government, valuation will be done by valuer from State Department of Valuation and Property Services.

The expertise in valuation is important as stated by Judge Hepworth in the case of *Bertam Consolidated Rubber Co. Ltd. vs. Collector of Land Revenue of Butterworth* (1965) 1 MLJ 171. He stated that :

“Market value of a property is not determined exactly through mathematical knowledge because land is not a homogenous commodity. A property value is depending on several factors and values adapted as open market is actually a professional opinion in that field”.

Valuation method is a specific approach used by valuers in determining the importance value of one property. However, LAA 1960 does not provide valuation method accepted in land acquisition. But, the best valuation method to be used is depending on type of properties, its appropriateness and its market value.

3.8.3 Public Valuer

Public valuer is a valuer who is ordered by the Land Administrator to valuation and prepares a report and logical valuation for compensation payment in land acquisition case. Public Valuer is employed under the Department of Valuation and Property Services, Ministry of Finance Malaysia. Normally, valuation report is prepared by a Public Valuer for the whole acquisition process. This report consists of all lots involved in the acquisition and will be considered as the basis and reference for the Land Administrator to get related information before awarding the compensation to the interested parties.

During the valuation works, a valuer would visit the site of acquisition in order to identify some related aspects to be taken into consideration in determining

the compensation amount to be offered. Site visit will be done after the District Land Office ordered the valuer to do so, which is after the acquisition is gazetted either under the provision of Section 4 or Section 8 of LAA 1960.

Before the site visit, determination of current valuation date for lots involved will be done in the first place. This is because the determination of valuation date is done based on declaration of gazette either according to Section 4 or Section 8. The purpose is to ensure that the compensation to be given would reach current market price.

The next step is gathering related information on lots involved from related Land Office. Data to be gathered are such as type of land use, type of land hold, planning zoning and other related reserves. The valuation report will then be submitted to the Land Administrator.

As for land acquisition for the development of KUTKM campus, Department of Valuation and Property Services of Malacca has prepared the valuation report.

3.8.4 Private Valuer

Private Valuer is a legal valuer and defined as valuation officer who works with Registered Valuer or Appraiser under the Valuer, Appraiser and Real Estate Agent Act 1981. As for land acquisition case, Private Valuer is a valuer who is hired by interested parties. A private valuer is a professional valuer who would assist the related parties in claiming an adequate compensation amount. The compensation is in lined with the provision of Article 13 of the Federal Constitution and the First Schedule of LAA 1960.

Compared to Public Valuer, Private Valuer would prepare a valuation report on behalf of related parties who hired them and not a report for the whole are of acquisition.

All valuation and compensation determination procedures between Private and Public Valuer are the same in the early stage. This is because all data gathered and the valuation date is the same as stated under the provision of LAA 1960. However, value discrepancy exists during valuation works, especially during valuation details, basis in valuation determination, transaction proofs being used, factor affluent the valuation and valuer's opinion.

This situation would cause the existence of value discrepancy between compensation claim and offer from both valuers. In such case, there is no one valuer who is right and who is wrong because both valuers are experts in valuation field. Then, the Land Administrator has to study the report submitted by both valuers and decide on compensation amount to be awarded to the interested parties.

Based on the provisions of Valuer, Appraiser and Real Estate Agent Act 1981 (Act 531), the cost and fee of Private Valuer will be paid by the government and compensation claim must be submitted through the Land Administrator. Besides that, compensation claim must be done in accordance to the provision of Section 14 (5) of LAA 1960 and the Valuer, Appraiser and Real Estate Agent Act 1981 (Act 531).

The cost and fee of a Private Valuer is depends on compensation amount claimed. For the amount which is less than RM50,000, the fee is RM1,500, while for the amount which is more than RM50,000 until RM500,000, the fee is RM 2,500. For other amount of claim, the fee has to follow the provision of the act.

The fee will be paid by the agency who acquires the land deducting from total amount of compensation paid to the interested parties. However, the Land Administrator would pay the valuation fee based on normal practice and other related circulation letter provide by related department.

3.9 Award by the Land Administrator

In normal practice, Land Administrator does not do any valuation in determining compensation amount and does not have any power to do valuation.

Land Administrator would prepare the data on lands involved while the power to do site visit as in the hand of Valuation Officer involved. Valuation Officer plays the role of preparing valuation report and the compensation amount agreed to be paid to the interested parties. Based on the valuation report, Land Administrator will then decide on compensation amount to be awarded to the interested parties through Form G in land acquisition process.

The role of Public Valuer has been accepted in compensation amount determination process by the Land Administration (Hazaman, 1998). The amount submitted will be evaluated by the Land Administrator before the final amount is decided. Therefore, the Land Administrator should has the knowledge on related aspects to be considered in determining the amount of compensation to be awarded.

Reference to the First Schedule of LAA 1960 on “Principles Relating to the Determination of Compensation” has to be done because there are several past cases which directly refer to the principles.

According to Teo Keang Sood & Khaw Lake Tee in Mohd. Nazri (1997), there are many cases of compensation determination is referred to the First Schedule of LAA 1960. In the case of *Lembaga Amanah Sekolah Semanggat Malaysia vs. Collector of Land Revenue*, (1978) 1 MLJ 34, Judge Hasim Yeop A.Sani has stated that :

“LAA 1960 has explained that the basis in determination of adequate compensation is the market value and other factors stated in Para 2 of the First Schedule. All things which are compensation related have the tendency to the First Schedule. It seems to me that all these provisions is to become specific order by the legislation bodies to elude consideration on other things”.

In addition, he also stated that :

“Together becomes the basis of Para 2 of the First Schedule of LAA 1960 is the provision of Para 3 of the First Schedule. Para 3 has

provided on things not to be considered by the court in determination of compensation. The comparison between Para 2 and Para 3 has clear shown that Para 2 provided on basic principles in determination of compensation, while Para 3 provided on things not to be considered in determination of compensation due to either the amount is too small (cannot be claimed) or sentiment (reluctance on the name of religion or other reason) or other things which is not related to the value of the land to its interested parties (up to acquisition enforce)...”.

The statement in the decision of that case has clearly shown that the principles of compensation determination as listed under the First Schedule of LAA 1960 is the provision for the Land Administrator or the Court to follow and comply with.

3.10 Conclusion

Determination of compensation is the most critical stage in land acquisition process. At this stage, all interested parties would be called to attend during the enquiry at the related Land Office of Lands and Mines Office through the Form E. at this stage also all interested parties would be offered an amount of compensation by the Land Administrator.

After receiving the Form The, all interested parties could hire a Private Valuer to assist them in preparing valuation and report of adequate compensation claim. The valuation report by Private Valuer will be submitted to the Land Administrator for consideration before final Award is decided.

Valuation method which is normally used by both Public and Private Valuers for land acquisition case is Comparison Method. This method is used because it is easy for the valuers to find comparison details based on latest transaction in surrounding area. Hence, with some adjustment, the current market value of the land can be determined.

CHAPTER 4

CASE STUDY : LAND ACQUISITION FOR THE DEVELOPMENT OF KOLEJ UNIVERSITI TEKNOLOGI KEBANGSAAN MALAYSIA (KUTKM), AYER KEROH, MALACCA

4.1 Introduction

Development of higher learning institution is one of Malaysia's agenda in order to achieve 'developed country' status. Thus, government has decided to develop more 'Kolej Universiti' as to create opportunities for public to continue study. Besides that, the development of higher learning institution would hopefully produce more professionals in various fields.

There are several 'Kolej Universiti' has been built in Malaysia within the period of 8th Malaysian Plan such as Kolej Universiti Kejuruteraan Utara Malaysia (KUKUM) in Perlis, Kolej Universiti Islam Malaysia (KUIM) in Kuala Lumpur, Kolej Universiti Sains dan Teknologi Malaysia (KUSTEM) in Terengganu, Kolej Universiti Kejuruteraan and Teknologi Malaysia (KUKTEM) in Pahang and Kolej Universiti Teknikal Kebangsaan Malaysia (KUTKM) in Melaka. Every 'Kolej Universiti' has various expertises in specific fields decided by the government.

Nowadays, there are some 'Kolej Universiti' which are still located at non-permanent place or building. This is because their campus has not been fully developed yet. However, the government would always try to create more facilities and infrastructures within the campus area in order to ensure conducive environment for students who studied there.

The development of these 'Kolej Universiti' needs a big site of location for each one of them as to locate several buildings such as the faculties, lecture rooms, hostels, administration buildings and other facilities such as cafeteria, mosques and many others. Thus, in order to develop a 'Kolej Universiti', State Authority and other related agencies have to acquire private land as to provide site for the development.

Acquisition of land not only done by considering the development for the campus area itself, but also for the development of supporting facilities such as road circulation.

Location of these campuses is decided by the government and other related public agencies. These campuses can be located either within urban, suburban or rural area. The existing category of site to be acquired can be estates, agriculture land and rural villages.

As for KUTKM Malacca, the development of this campus requires a large acreage of land. This campus is the best case study to be taken because land acquisition process for the development of this campus involves acquisition for the whole lot of each lot involved. Besides that, the variety of existing category of land would also show different type of result according to the importance of land to the landowner.

Scope of this study focuses on the existence of discrepancies between amount compensation claimed by related parties and the amount offered and awarded by State Authority. This chapter would specifically discuss on case of this study which is the development of KUTKM, Malacca and the land acquisition process involved. Discussion will cover project's background, location, numbers and total acreage of land lot involved.

Discussion will then continue with analysis on case study. Analysis for this study will cover the objective of analysis which is to determine the discrepancy of compensation amount between private valuer, public valuer and Land Administrator or the court.

In order to achieve the objective above, this chapter will discuss on elements involve which is gathered from field survey with landowners, other interested parties, public and private valuers and also the Land Administrator involved in KUTKM project. This chapter will also discuss on method data gathering, respondent involved and method of analysis will be used.

The main goal of the analysis part is to prove the existence of value discrepancy between amount of compensation claimed by landowner and other interested parties with the amount offered and awarded by State Authority or the Land Administrator as well as determining method of valuation being used by each parties.

4.2 Study Area Background

Alor Gajah district is one of three main districts of Malacca. Once, Alor Gajah was famous of its warrior of Naning named Dato' Dol Said who fought with the British during the Naning War in the year of 1832. This district is once known as a thick jungle area and it is believed that this jungle also was a pathway for wild elephants. However, Alor Gajah nowadays has become one of most rapidly developing district in Malacca.

Alor Gajah district has three main towns and sixteen other small towns. Total area of Alor Gajah district is 66,302 ha and it consists of 31 mukims. According to population census 2000, total population of Alor Gajah district is 131,870. Alor Gajah town is situated 24 kilometers from Malacca Town and it is one of main entrance to Malacca State from the North-South Highway.

According to the Property Market Report of Malacca State (2001), Alor Gajah district has shown a great improvement in property sector recently. Transaction price for agriculture land is between RM140,000 to RM143,000 for each second layer lot. This price movement condition would surely affect amount of compensation claim.

Rapid population growth of this district has caused the government to decide on the development of a 'Kolej Universiti' in Malacca. Besides, there is no higher learning institution has been built in Malacca before. The development of KUTKM would hopefully create opportunities for students to further their study in engineering field besides helping the country in improving engineering sector.

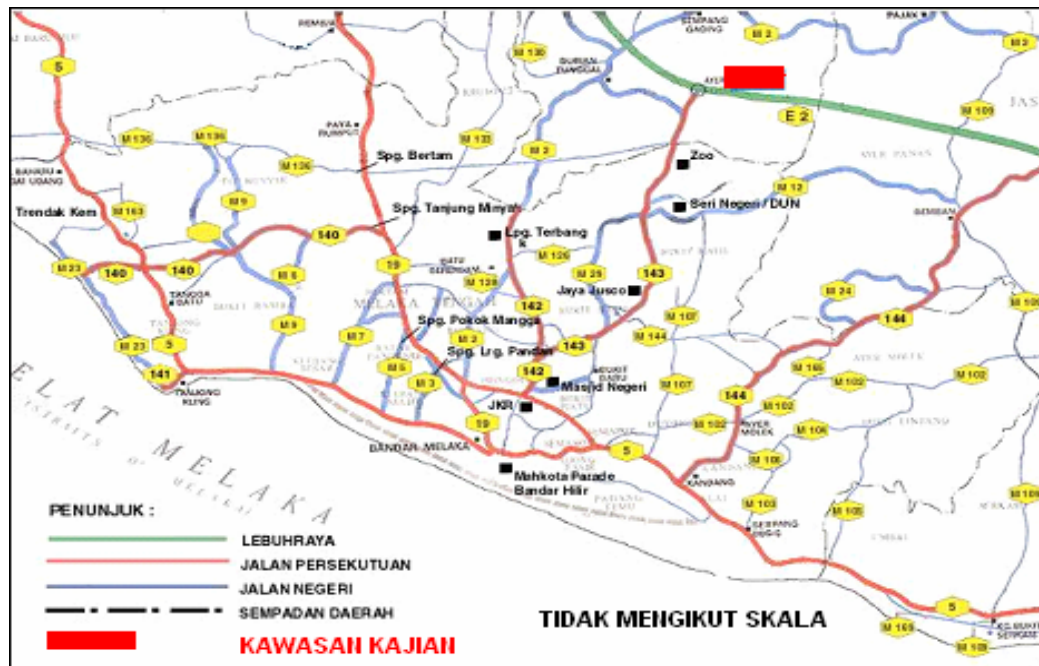
KUTKM campus is situated in the mukim of Durian Tunggal, which is the nearest mukim to Ayer Keroh. Actually, Ayer Keroh is the most suitable location for the development of KUTKM. It is because Ayer Keroh is the most developing district in Malacca, with its best accessibility network, facilities and developing industrial area. In addition, with its strategic location, the development of Ayer Keroh would hopefully go continuously in the future. State Authority of Malacca has recently announced Ayer Keroh as the centre of research and development for the whole Malacca with the development of Malacca International Trade Centre (MITC) complex. This complex can be used for seminars, conference and also as the research centre, exhibition and centre for research of halal product (Property Market Report of Malacca State, 2001).

Thus, there are many facilities have been built around the area of acquired land for the development of KUTKM. Besides public facilities, there are also two other private higher learning institution situated near KUTKM site which is the Yayasan Saad College and Multimedia University.

4.3 Location

Land acquisition for the development of KUTKM campus is situated in the Rural Plan of Bukit Senandung I and II, Mukim of Durian Tunggal, Malacca. It is about 6 kilometer towards the east of Durian Tunggal town which is between Durian Tunggal – Sempang Gading – Kesang Pajak road. The site was once an agriculture land with some houses built on it.

The site is surrounded by agriculture and rural areas. Some of villages around are such as Kampung Bukit Balai, Kampung Pulau, Kampung Padang Kerbau and Kampung Padang Keladi. Bordering the site in the southern site is the North-South Highway.



Source : www.melaka.jkr.gov.my/melaka_tengah/map.htm

Figure 4.1 : Location Map of Case Study

4.3.1 Land Form

The topography of KUTKM site is undulating and hilly. The existing plantation on the site was rubber and oil palm estate.

4.3.2 Facilities

Main accessibility to access KUTKM is through the Durian Tunggal – Sempang Gading – Kesang Pajak road. A better accessibility for the site is still under construction which is an exit route connecting KUTKM to the Ayer Keroh Toll Plaza of the North-South Highway.

During the acquisition process, this site could only be reached by a small route. Besides the main route to the site, there were also other reserved roads for agriculture activities. Some villages exist in surrounding area of the site.

Other utility facilities such as electricity, water supply and telecommunication network have been supplied to surrounding area such as to Kampung Padang Kerbau and Kampung Padang Keladi. Besides that, there are also public transportation services such as bus and taxi.

4.4 Project's Background and Land Acquisition

Land acquisition for the development of KUTKM has been declared in Form D on 24.05.2001. Gazette Number for this project is No. 199, Gazette of Malacca State Government. The purpose of acquisition is to develop KUTKM campus. For the time being, KUTKM campus is temporarily operating at Taman Tasek Utama, Ayer Keroh, Malacca.

The development of KUTKM campus involves 160 land lots and the total acreage of the site is 285.1146 ha (725 acres). Almost all land lot are acquired in whole except for thirteen lot which are required only part of them. All lot acquired are originally agriculture land bordering with the North-South Highway near to Ayer Keroh district. Lots involved consist of small lots between 0.5 and 5 ha each. There only two large land lots with the acreage of 11 and 8 ha.

There are 31 lots involved in free hold and the some other lots in lease hold. Duration of lease is different from one to another lot. 119 lots are in lease hold for 99 years, 8 lots at 59 years, 1 lot at 64 years and another 1 lot at 76 years. Some land lots would end their lease hold on 2025, 2027 and 2037. As for lots with lease hold of 99 years, it would end on 2080 and 2090.

Hearing proceeding for compensation claim was done in September 2001. The hearing was held at the Land Office of Alor Gajah district. Until now, land acquisition process has been fully done and the development of KUTKM campus has started since 25th January 2002. The launching ceremony has been done by the fourth Prime Minsiter of Malaysia, Tun (formerly Dato' Seri) Dr. Mahathir Mohamed.

This two-phase development costing RM600 million, has entered the stage of site clearance until December 2003. Figure 4.2 shows master plan of proposed KUTKM campus which is expected to be completed by 2010.

4.5 Implementation during KUTKM Development

KUTKM campus is developed by a consortium of companies. Name of companies involved are Kumpulan Melaka Berhad, Putra Perdana and Cobrain which is named as Konsortium Kumpulan Melaka Berhad, Putra Perdana & Cobrain.

The main role of this consortium is to ensure that the project would be developed without any constraint and it has to be completed within the time given. Thus, the consortium has prepared a framework consists all stages of development and construction.

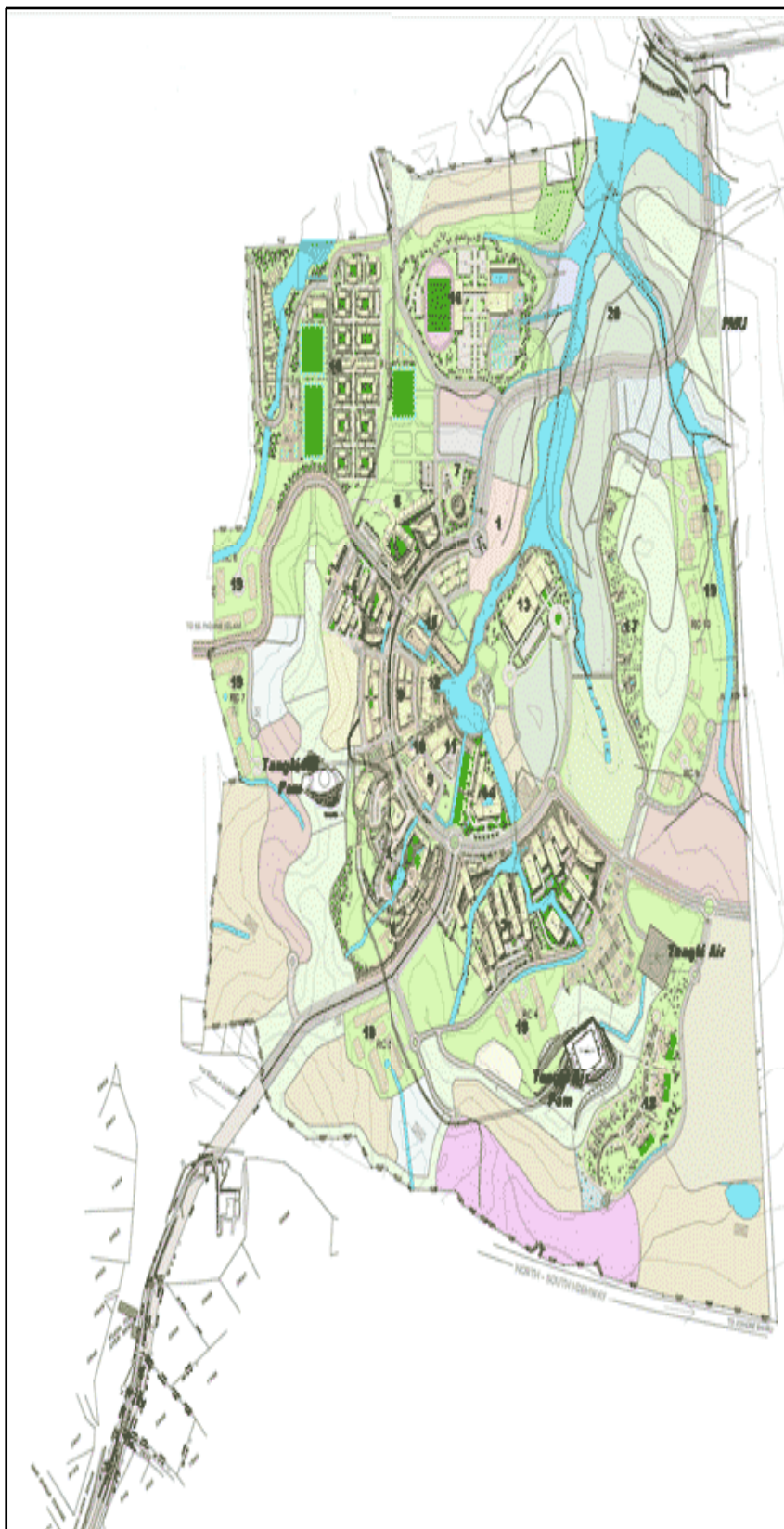


Figure 4.1: Master Plan of KUTKM Campus, Malacca

* Not to Scale

Source : Writer's Interpretation (2005) from www.kutkm.edu.my/university_maps_p.shtml

Site clearing has been done since land acquisition process has been done together with the launching ceremony held on 22nd January 2002.

The development of KUTKM campus is divided into two phase, whereby the first phase consists of 3 blocks of faculties which are Electrical Engineering Faculty, Electronical Engineering Faculty, Computer Engineering Faculty and the administration building. For the time being, the first phase has nearly completed. Other blocks will be developed during the second phase of the project which is to be completed by 2010 according to the consortium. Phase two consists of hostels and three other faculties which are Information and Communication Technology Faculty, Industrial Engineering Faculty and Mechanical Engineering Faculty.

Construction approaches being used in this development are 'Built-Lease-Transfer' and 'Built-Own-Transfer'. The mode is financing for this development is 'bridging finance' according to stages involved. For the time being, KUTKM campus is still under construction.

Photo 4.1 and Photo 4.2 show development progress of KUTKM.

4.6 Method of Study

In order to ensure the achievement of this study's objectives, two methods are being used as for data gathering. The first method is observation method as to achieve the first objective which is to study the method of valuation in determining the amount of compensation.

This method is being used because all data at this stage were gathered from related valuation report prepared by Department of Valuation and Property Services which is used during the compensation claiming process. References also made onto valuation report prepared by private valuer involved.



Photo 4.1 : Entrance Road to KUTKM from Durian Tunggal – Sempang Pulai – Kesang Pajak Road



Photo 4.2 : Construction of Faculty Blocks which is Nearly Completed

As to achieve the second objective of this study which is to determine the discrepancy of value between Public Valuer, Private Valuer and Award by Land Administrator, interviews and observation method has been used. These methods are being used because this study needs primary data from all parties involved in order to determine the existence of value discrepancies. All these primary data are confidential and only focuses on several important aspects. Data are only gathered from those interested parties who hired private valuer in evaluating the value of their acquired land.

Interview with related persons and officers are being done as to determine factors of value discrepancies existence through questionnaires. This method of interview is being used because the expected respondents are limited.

4.7 Analysis

Qualitative analysis is the best method to be used for this study. All results of analysis will be shown in form tables and figures. Elaboration and conclusion will be made based on result shown in these tables and figures.

Data gathered during the survey are only limited to data on compensation claim and award. It is because the observation method is been used to evaluate this item and not other elements involved. Due to various claim and offer of compensation amount according to the valuation report prepared by both private and public valuers, thus this study focuses on the current market land value stated by both valuers. Claims on other cost such as building cost does not been taken into consideration in this study.

4.7.1 Analysis of Valuation Method to Determine Compensation Amount

Analysis has been done onto valuation method being used in determining compensation amount. This study has done an observation onto secondary data gathered from Valuation and Report of Land Acquisition for the Development of

KUTKM Campus, which is prepared by Department of Valuation and Property Services of Malacca (Valuation and Report of KUTKM). Besides that, valuation report which is prepared by private valuers hired by interested parties is also been observed in order to determine the method of valuation being used. Through these two reports, information on status of land can be gathered thus achieving the first objective of this study which is to study the method of valuation in determining the amount of compensation.

According to Valuation and Report of KUTKM, there are 160 lots have been acquired for this development project and consist of several type of land including the Malay Reserved Land (MRL) and other ordinary lot. Besides that, all lots involved are either agriculture or non-restricted land. From the total of 160 lot involved, only 82 lots which the landowner hired private valuer to do evaluation onto their land. Thus, valuation report for these 82 lots will be taken into observation in this study.

Lands involved are lands at the first layer until the rural area. Some lands are situated in the Rural Plan of Bukit Senandung I and II, Mukim of Durian Tunggal, Malacca. Some other lots are the third layer land from the Durian Tunggal – Kesang Pajak road and bordering until the North-South Highway at the southern part of the site. Land acquisition plan for this project is shown in Appendix A.

Some of these lands were acquired for the whole lot while some others involved only part of them. Out of 160 lots, 148 lots were wholly acquired while only part of each lot was acquired for the other 42 lots. According to Valuation and Report of KUTKM, lands involved are consisting of homestead, rural and agriculture land. Most of the land acquired was in shape of rectangle and they are undulating and hilly. The acreage of each lot was between 0.4094 ha to 11.6856 ha.

The land acquisition has caused several families to move to other places. There were 33 landowners who protest the compensation amount offered by the State Authority. However, the Chief Director of Lands and Mines of Malacca (Development Unit) has solved the protest with help of Legal Adviser (LA) of Malacca without bringing the case to the court. Actually, outside court settlement is

the solution as it saves much on time and cost. As for the interested parties who make the claim, the court would not surely approve on what the protest.

All cases of compensation amount protest for KUTKM site were settled outside the court.

As for the land acquisition for KUTKM development, both public and private valuers were using the comparison method of valuation. In order to use this method of valuation, several related information need to be gathered. In the analyzing process, best comparison has been chosen in order to get land market value.

There are many comparison information can be gathered. It is because, lands acquired are agriculture land. Besides, surrounding lands also have same characteristics with the acquired land in site. Comparison details can be gathered from property transaction within 2 years from the date of Gazette which is from 24.05.1999 until 24.05.2001.

Both public and private valuers involved would search for comparison lots according to their expertise, thus it cause the discrepancies on criteria of lot chosen. However, the discrepancy still can be accepted based on their legal expertise.

In order to determine the method of valuation being used by both public and private valuers, reviews have to be made onto the valuation report. Because the Valuation and Report of KUTKM is CONFIDENTIAL, thus reference made on method of valuation being used is limited.

4.7.2 Analysis on Determination of Value Discrepancies between Public Valuer, Private Valuer and Award by Land Administrator

Observations need to be done onto some related data in order to determine the existence of value discrepancies in land acquisition case. Observations will focus on compensation amount submitted by both public and private valuers to Land Administrator.

Table 4.1 below shows the data on compensation amount claimed and offered gathered from valuation report. These data are all relating to lots which are evaluated by private valuer. The discrepancies between amount claimed and offered by private and public valuer are between 20 to 120 percent, concerning factors that influenced the discrepancies.

Table 4.1 : Data on Amount Claimed, Offered, Award by Land Administrator and Solution by Legal Advisor for Lots Evaluated by Private Valuer

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	149	237,166.00	304,879.00	-28.55	284,598.90	
2	181	661,621.00	850,523.00	-28.55	793,945.50	
3	183	1,666,814.00	2,165,625.00	-29.93	2,000,000.00	
4	191	623,746.00	949,339.00	-52.20	883,000.00	
5	194	1,220,449.00	1,560,962.00	-27.90	1,475,050.00	
6	201	19,203.00	23,430.00	-22.01	23,000.00	
7	1562	401,677.00	547,976.00	-36.42	484,000.00	
8	1725	291,888.00	381,786.00	-30.80	379,600.00	
9	1726	147,704.00	209,990.00	-42.17	192,000.00	
10	1727	390,963.00	611,187.00	-56.33	532,700.00	
11	1728	388,608.00	508,300.00	-30.80	505,000.00	
12	1729	371,930.00	536,591.00	-44.27	467,500.00	
13	1734	553,242.00	842,027.00	-52.20	785,000.00	
14	1735	572,438.00	871,250.00	-52.20	812,600.00	
15	1766	648,491.00	833,643.00	-28.55	778,188.60	
16	1767	648,923.00	834,199.00	-28.55	778,707.60	
17	1768	615,672.00	791,455.00	-28.55	738,806.90	
18	1769	648,923.00	834,199.00	-28.55	778,707.90	
19	1770	463,830.00	596,260.00	-28.55	556,596.40	
20	1931	327,648.00	419,062.00	-27.90	394,000.00	
21	1932	304,928.00	390,000.00	-27.90	366,000.00	
22	1933	308,956.00	395,152.00	-27.90	370,000.00	
23	1934	287,275.00	360,059.00	-25.34	345,000.00	
24	1984	176,277.00	300,750.00	-70.61	294,800.00	
25	1985	127,330.00	190,000.00	-49.22	154,000.00	
26	1986	176,277.00	300,750.00	-70.61	294,800.00	
27	1987	127,330.00	190,000.00	-49.22	174,000.00	
28	1999	373,722.00	476,187.00	-27.58	448,000.00	
29	2000	373,722.00	476,777.00	-27.58	425,000.00	
30	2001	280,292.00	476,776.00	-70.10	425,000.00	
31	2051	201,173.00	270,158.00	-34.29	245,000.00	
32	2053	200,622.00	392,286.00	-79.25	201,000.00	240,746.40
33	2054	208,787.00	377,235.00	-80.68	209,000.00	250,544.40
34	2058	207,380.00	367,180.00	-76.66	208,000.00	248,856.00
35	2059	166,694.00	249,805.00	-49.86	166,700.00	200,032.80
36	2060	166,930.00	370,830.00	-122.15	166,900.00	200,316.00
37	2062	198,630.00	356,049.00	-79.25	198,600.00	238,356.00
38	2064	205,591.00	261,562.00	-27.22	247,000.00	

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
39	2065	55,704.00	99,856.00	-79.26	55,700.00	66,844.80
40	2068	200,845.00	401,145.00	-99.73	200,800.00	241,014.00
41	2070	152,535.00	272,600.00	-78.71	152,600.00	183,042.00
42	2073	188,679.00	338,165.00	-79.23	230,000.00	
43	2075	215,201.00	289,004.00	-34.29	263,000.00	
44	2077	215,201.00	385,870.00	-79.31	215,200.00	258,241.20
45	2082	215,869.00	289,453.00	-34.09	264,000.00	
46	2083	258,975.00	347,785.00	-34.29	318,000.00	
47	2086	213,549.00	383,050.00	-79.37	213,500.00	256,258.80
48	2087	223,827.00	401,145.00	-79.22	223,800.00	268,592.40
49	2090	241,067.00	432,400.00	-79.37	241,100.00	289,280.40
50	2091	238,746.00	320,625.00	-34.30	287,000.00	286,495.20
51	2092	240,739.00	305,484.00	-26.89	289,000.00	
52	2094	233,778.00	419,005.00	-79.23	280,599.92	
53	2095	223,827.00	410,145.00	-79.22	223,800.00	268,592.40
54	2096	222,503.00	398,842.00	-79.25	222,500.00	267,003.60
55	2097	210,901.00	283,218.00	-34.29	248,294.00	
56	2098	206,570.00	273,320.00	-80.72	206,600.00	247,884.00
57	2101	201,852.00	280,434.00	-38.93	242,280.00	
58	2102	203,109.00	367,065.00	-80.72	202,800.00	243,730.80
59	2107	211,613.00	294,000.00	-38.93	254,000.00	
60	2110	206,259.00	286,559.00	-38.93	250,000.00	
61	2111	205,313.00	285,250.00	-38.93	247,000.00	
62	2112	206,259.00	372,758.00	-80.72	206,300.00	247,510.80
63	2113	205,002.00	370,575.00	-80.77	246,050.00	
64	2114	202,798.00	366,525.00	-80.73	202,800.00	243,357.60
65	2115	205,313.00	362,780.00	-76.70	205,300.00	246,375.60
66	2120	236,098.00	423,000.00	-79.16	236,100.00	283,317.60
67	2121	241,067.00	331,690.00	-37.59	290,000.00	
68	2123	221,179.00	297,019.00	-34.29	266,000.00	
69	2129	178,899.00	240,240.00	-34.29	215,000.00	
70	2131	175,653.00	356,628.00	-103.05	211,000.00	
71	2132	189,925.00	389,348.00	-105.00	190,000.00	227,910.00
72	2133	177,221.00	351,325.00	-98.24	177,200.00	212,665.20
73	2138	213,505.00	385,875.00	-80.73	213,500.00	256,206.00
74	2140	212,559.00	384,142.00	-81.54	212,600.00	255,070.80
75	2141	213,729.00	385,268.00	-80.26	213,700.00	256,474.80
76	2180	211,268.00	416,068.00	-96.94	211,300.00	253,521.60
77	2182	177,339.00	283,717.00	-59.99	215,000.00	
78	2657	19,648.00	33,522.00	-70.61	32,800.00	
79	2659	35,577.00	60,696.00	-70.60	59,500.00	
80	2661	52,627.00	82,302.00	-56.39	69,000.00	
81	2663	39,070.00	61,105.00	-56.40	51,000.00	
82	2941	121,688.00	220,900.00	-81.53	122,000.00	146,025.60

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

The correlation of these value discrepancies is shown in Figure 4.3 and 4.4 below. The graph shows the discrepancy level between amounts offered by Public

Valuer, amount claimed by Private Valuer, Award by Land Administrator and Solution by Legal Adviser.

To understand the discrepancies clearly, some price segment have been set. All lots involved will be categorized into several price segments according to current land market price. The formulation of these segments is based on data and information gathered from both Public and Private Valuer. There 6 price segment which are :

- i. Price segment of RM173,400 per ha
- ii. Price segment of RM144,900 per ha
- iii. Price segment of RM138,000 per ha
- iv. Price segment of RM131,100 per ha
- v. Price segment of RM124,500 per ha
- vi. Price segment of RM86,900 per ha

Thus, there 72 lots from the table can be classified according the price segments considering factors in determining comparison details by both public and private valuers. The classification will also clarify on factors that caused the discrepancies of value between both public and private valuer.

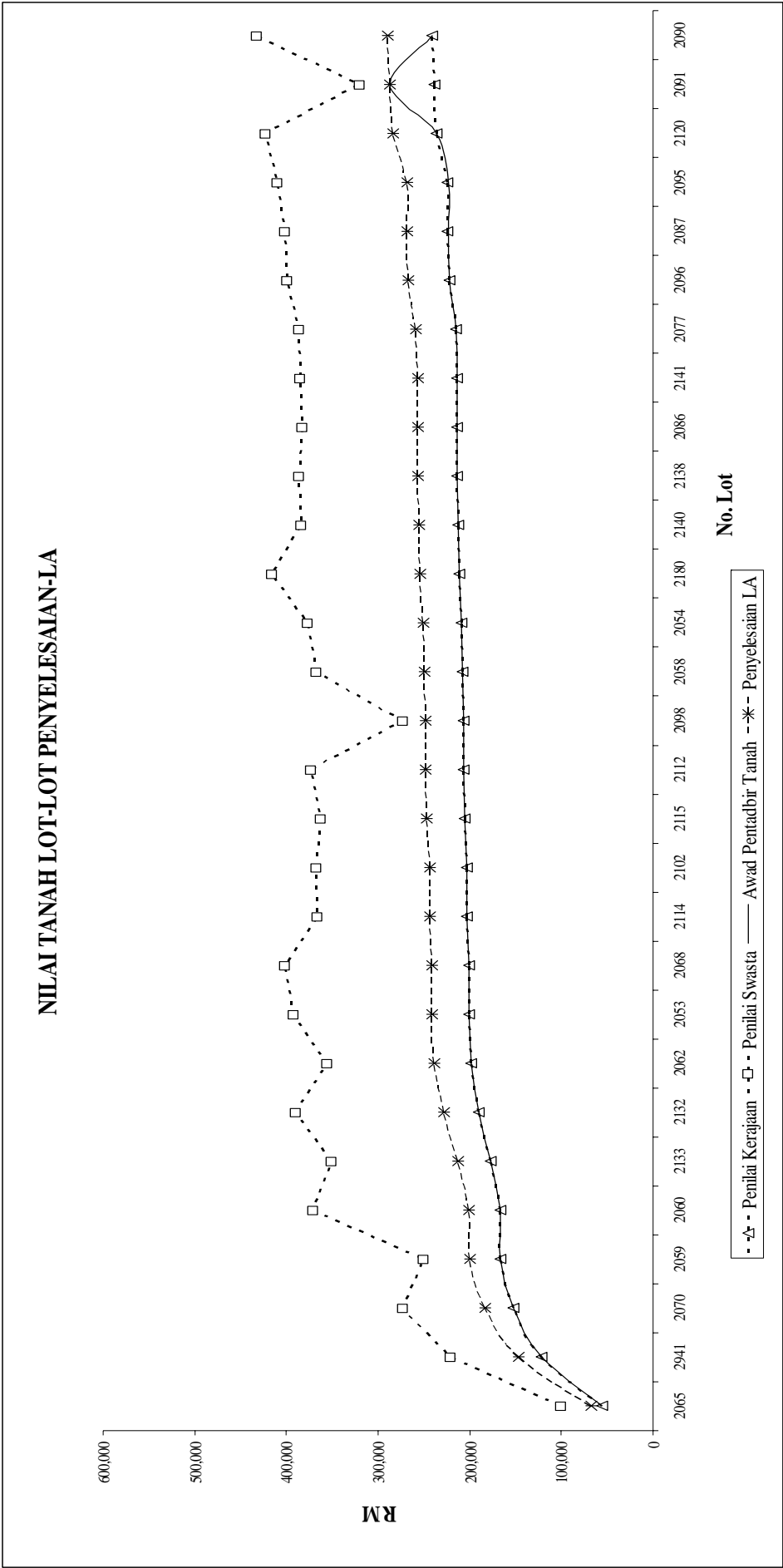


Figure 4.2: Correlation of Value Discrepancies for Lots Agreed on Legal Adviser Solution

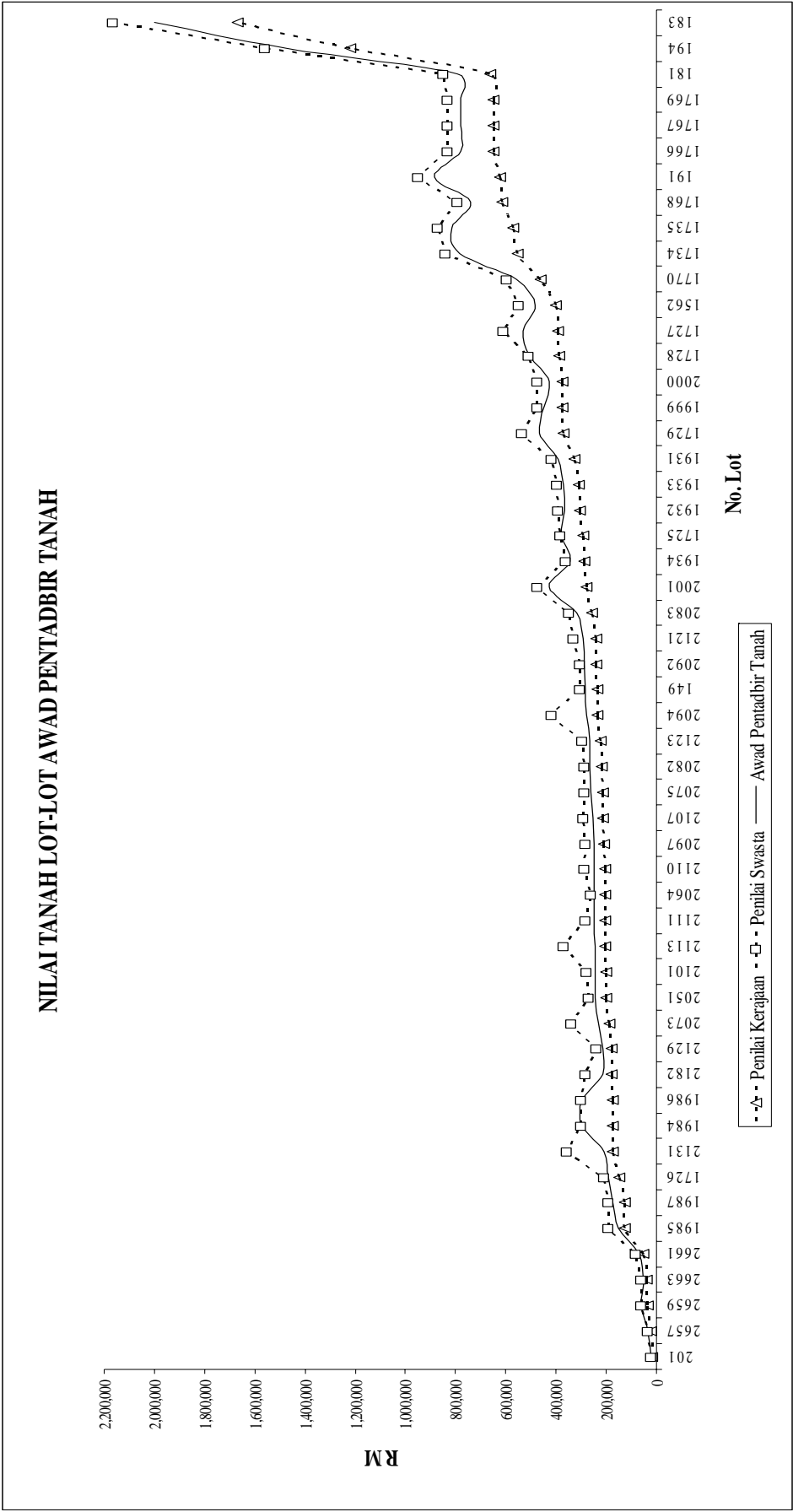


Figure 4.3: Correlation of Value Discrepancies for Lots Agreed on Award by Land Administrator

4.7.2.1 Price Segment of RM173,400 per ha

This segment has the highest price of land. Lots categorized in this segment are lot situated at the second layer from main access to site which is Durian Tunggal – Kesang Pajak road and these lots are at the front side of all acquired land. These lots are also located near to developed area at its surrounding and the Yayasan Saad College.

There are 7 lots classified in this segment. The acreage of each lot is between 1.3709 and 3.8244 ha and all these lots are free hold land. Only one Private Valuer involved in the preparation of valuation report for all lots in this segment. Value discrepancy for lots in segment is 29 percent and Table 4.2 below shows details on the discrepancies for this segment.

Table 4.2 : Details of Value Discrepancy for Price Segment of RM173,400 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	149	237,166.00	304,879.00	-28.55	284,598.90	
2	181	661,621.00	850,523.00	-28.55	793,945.50	
3	1766	648,491.00	833,643.00	-28.55	778,188.60	
4	1767	648,923.00	834,199.00	-28.55	778,707.60	
5	1768	615,672.00	791,455.00	-28.55	738,806.90	
6	1769	648,923.00	834,199.00	-28.55	778,707.90	
7	1770	463,830.00	596,260.00	-28.55	556,596.40	

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

Correlation of value discrepancy for this segment is shown in Figure 4.5 below :

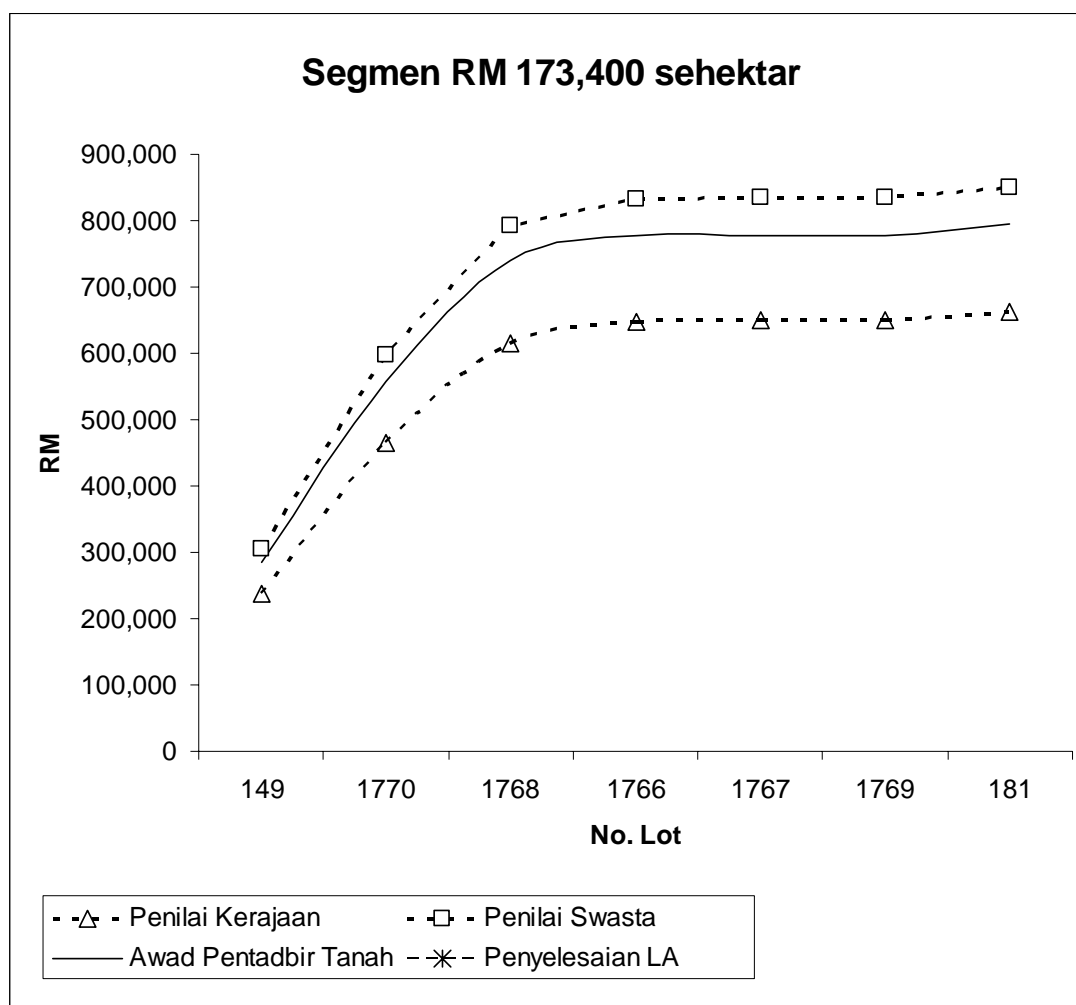


Figure 4.5 : Correlation of Value Discrepancy for Price Segment of RM173,400 per ha

4.7.2.2 Price Segment of RM144,900 per ha

Lots categorized in this segment are lots situated at the boundary of acquisition site. There are 7 lots classified in this segment. The acreage of each lot is between 2.1044 and 11.6856 ha and all these lots are free hold land.

Only one Private Valuer involved in the preparation of valuation report for all lots in this segment. Value discrepancy for lots in segment is between 27 and 36 percent.

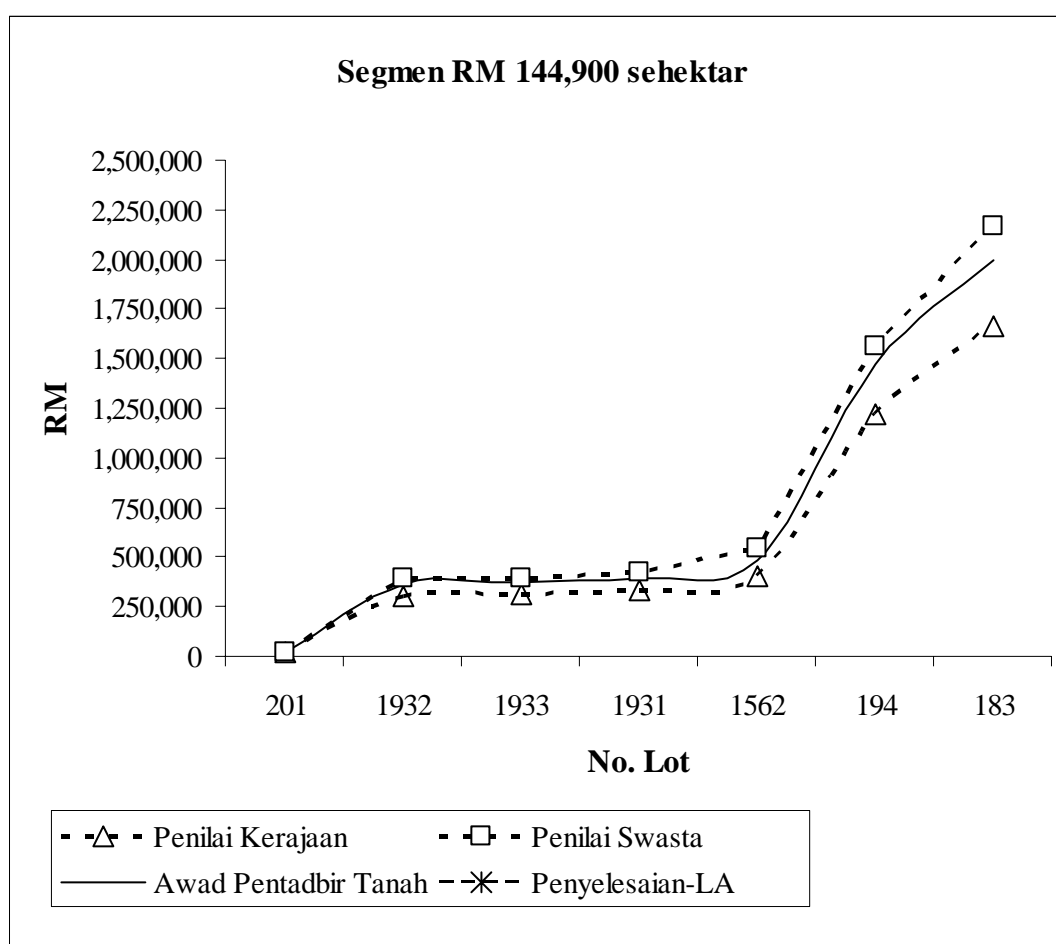
Table 4.3 below shows details on the discrepancies for this segment.

Table 4.3 : Details of Value Discrepancy for Price Segment of RM144,900 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	183	1,666,814.00	2,165,625.00	-29.93	2,000,000.00	
2	194	1,220,449.00	1,560,962.00	-27.9	1,475,050.00	
3	201	19,203.00	23,430.00	-22.01	23,000.00	
4	1562	401,677.00	547,976.00	-36.42	484,000.00	
5	1931	327,648.00	419,062.00	-27.9	394,000.00	
6	1932	304,928.00	390,000.00	-27.9	366,000.00	
7	1933	308,956.00	395,152.00	-27.9	370,000.00	

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

Correlation of value discrepancy for this segment is shown in Figure 4.6 below :

**Figure 4.6 : Correlation of Value Discrepancy for Price Segment of RM144,900 per ha**

4.7.2.3 Price Segment of RM138,000 per ha

This segment is the third highest price for land involved. There are only 5 lots classified in this segment with 4 of them are free hold land while the other 1 lot is a 99 years lease hold land. The acreage of each lot is between 0.8818 and 4.5199 ha.

There are two Private Valuers involved in the preparation of valuation report for all lots in this segment. Value discrepancy for lots in this segment is between 28 and 81 percent with one case of protest and settled by Legal Adviser Solution.

Table 4.4 below shows details on the discrepancies for this segment.

Table 4.4 : Details of Value Discrepancy for Price Segment of RM138,000 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	191	623,746.00	949,339.00	-52.20	883,000.00	
2	1734	553,242.00	842,027.00	-52.20	785,000.00	
3	1735	572,438.00	871,250.00	-52.20	812,600.00	
4	1934	287,275.00	360,059.00	-25.34	345,000.00	
5	2941	121,688.00	220,900.00	-81.53	122,000.00	146,025.60

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

Figure 4.7 below shows the correlation of discrepancies in this segment.

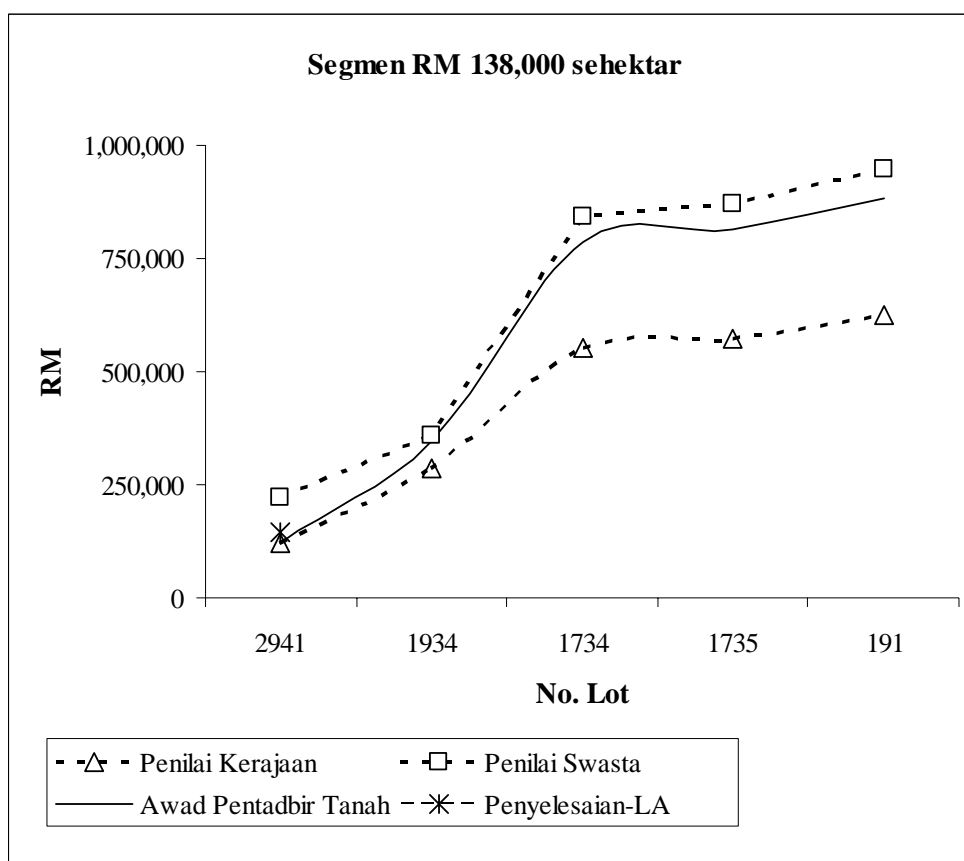


Figure 4.7 : Correlation of Value Discrepancy for Price Segment of RM138,000 per ha

4.7.2.4 Price Segment of RM131,100 per ha

This segment has the highest number of lots which is 29 lots. According to the analysis, high percentage of value discrepancy happens in this segment. This segment is the fourth highest price of land involved. All lots in this segment are 99 years lease hold which is to be end in around 2080's to 2110's. Each lot has the acreage of between 0.4249 and 1.8388 ha.

Value discrepancy for lots in this segment is between 27 and 122 percent. Analysis has shown that it is because all lots in this segment are lease hold for 99 years. These factors which influence the discrepancy will be discuss later in this chapter.

Table 4.5 below shows details on the discrepancies for this segment.

Table 4.5 : Details of Value Discrepancy for Price Segment of RM131,100 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	2051	201,173.00	270,158.00	-34.29	245,000.00	
2	2054	208,787.00	377,235.00	-80.68	209,000.00	250,544.40
3	2059	166,694.00	249,805.00	-49.86	166,700.00	200,032.80
4	2060	166,930.00	370,830.00	-122.15	166,900.00	200,316.00
5	2062	198,630.00	356,049.00	-79.25	198,600.00	238,356.00
6	2064	205,591.00	261,562.00	-27.22	247,000.00	
7	2065	55,704.00	99,856.00	-79.26	55,700.00	66,844.80
8	2068	200,845.00	401,145.00	-99.73	200,800.00	241,014.00
9	2070	152,535.00	272,600.00	-78.71	152,600.00	183,042.00
10	2082	215,869.00	289,453.00	-34.09	264,000.00	
11	2083	258,975.00	347,785.00	-34.29	318,000.00	
12	2086	213,549.00	383,050.00	-79.37	213,500.00	256,258.80
13	2087	223,827.00	401,145.00	-79.22	223,800.00	268,592.40
14	2090	241,067.00	432,400.00	-79.37	241,100.00	289,280.40
15	2091	238,746.00	320,625.00	-34.30	287,000.00	286,495.20
16	2092	240,739.00	305,484.00	-26.89	289,000.00	
17	2094	233,778.00	419,005.00	-79.23	280,599.92	
18	2095	223,827.00	410,145.00	-79.22	223,800.00	268,592.40
19	2096	222,503.00	398,842.00	-79.25	222,500.00	267,003.60
20	2097	210,901.00	283,218.00	-34.29	248,294.00	
21	2120	236,098.00	423,000.00	-79.16	236,100.00	283,317.60
22	2121	241,067.00	331,690.00	-37.59	290,000.00	
23	2123	221,179.00	297,019.00	-34.29	266,000.00	
24	2129	178,899.00	240,240.00	-34.29	215,000.00	
25	2131	175,653.00	356,628.00	-103.05	211,000.00	
26	2132	189,925.00	389,348.00	-105.00	190,000.00	227,910.00
27	2133	177,221.00	351,325.00	-98.24	177,200.00	212,665.20
28	2180	211,268.00	416,068.00	-96.94	211,300.00	253,521.60
29	2182	177,339.00	283,717.00	-59.99	215,000.00	

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

There are 17 lots of this segment make a protest on compensation amount and all case have been settled in front of the Legal Adviser of Malacca. Figure 4.8 below shows the correlation of discrepancies in this segment.

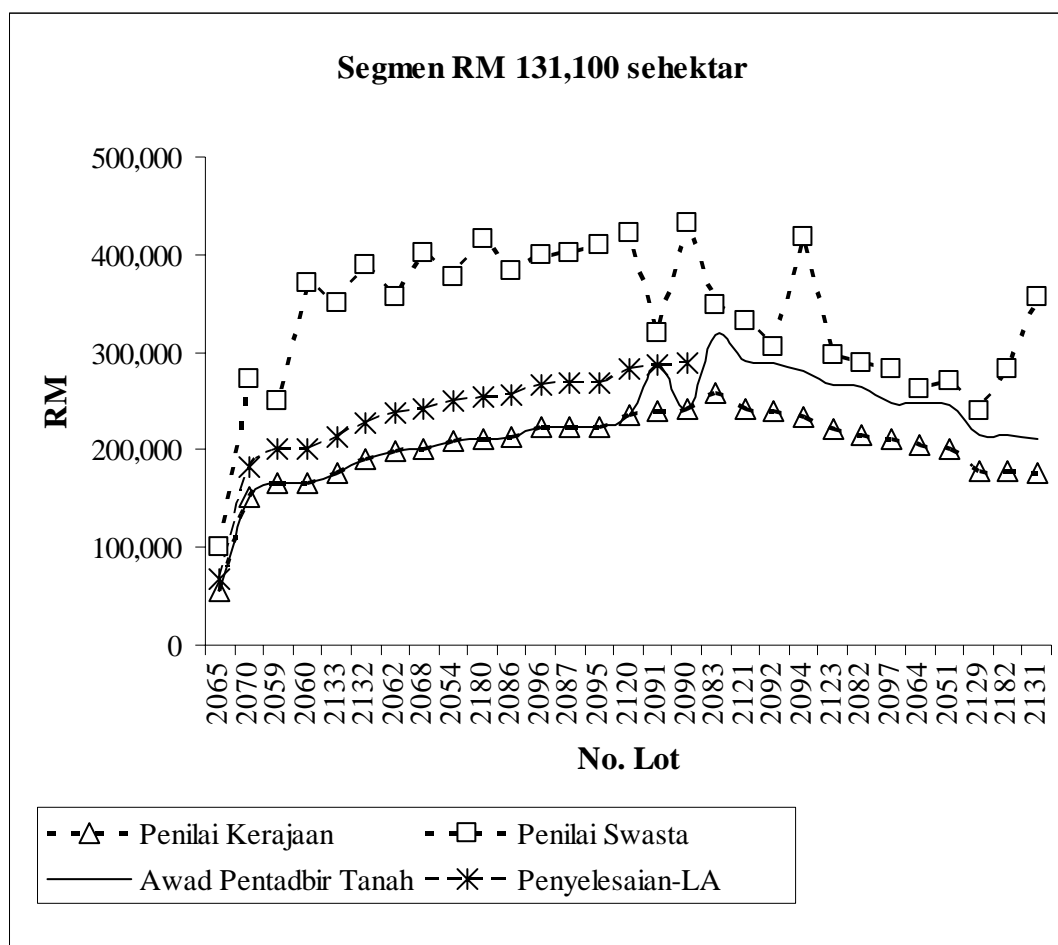


Figure 4.8 : Correlation of Value Discrepancy for Price Segment of RM131,100 per ha

From the figure above, it is shown that there is a big gap between compensation claimed and offered for lease hold land.

4.7.2.5 Price Segment of RM124,500 per ha

All lots in this segment are lease hold for 99 years. These lots are located in a far distance from the main road.

There are 14 lots have categorized in this segment. Value discrepancy for this segment is between 39 and 82 percent. This segment also shows a higher value discrepancy for lease hold land.

Table 4.6 shows the details of value discrepancy for this segment.

Table 4.6 : Details of Value Discrepancy for Price Segment of RM124,500 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	2058	207,380.00	367,180.00	-76.66	208,000.00	248,856.00
2	2098	206,570.00	273,320.00	-80.72	206,600.00	247,884.00
3	2101	201,852.00	280,434.00	-38.93	242,280.00	243,730.80
4	2102	203,109.00	367,065.00	-80.72	202,800.00	
5	2107	211,613.00	294,000.00	-38.93	254,000.00	
6	2110	206,259.00	286,559.00	-38.93	250,000.00	
7	2111	205,313.00	285,250.00	-38.93	247,000.00	
8	2112	206,259.00	372,758.00	-80.72	206,300.00	247,510.80
9	2113	205,002.00	370,575.00	-80.77	246,050.00	243,357.60
10	2114	202,798.00	366,525.00	-80.73	202,800.00	
11	2115	205,313.00	362,780.00	-76.70	205,300.00	
12	2138	213,505.00	385,875.00	-80.73	213,500.00	256,206.00
13	2140	212,559.00	384,142.00	-81.54	212,600.00	255,070.80
14	2141	213,729.00	385,268.00	-80.26	213,700.00	256,474.80

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

There are 9 lots in this segment which made protest on the amount offered and it was settled in front of the Legal Adviser of Malacca. 2 Private Valuers were hired to prepare the valuation report for lots in this segment.

Figure 4.9 below shows the correlation of discrepancies in this segment.

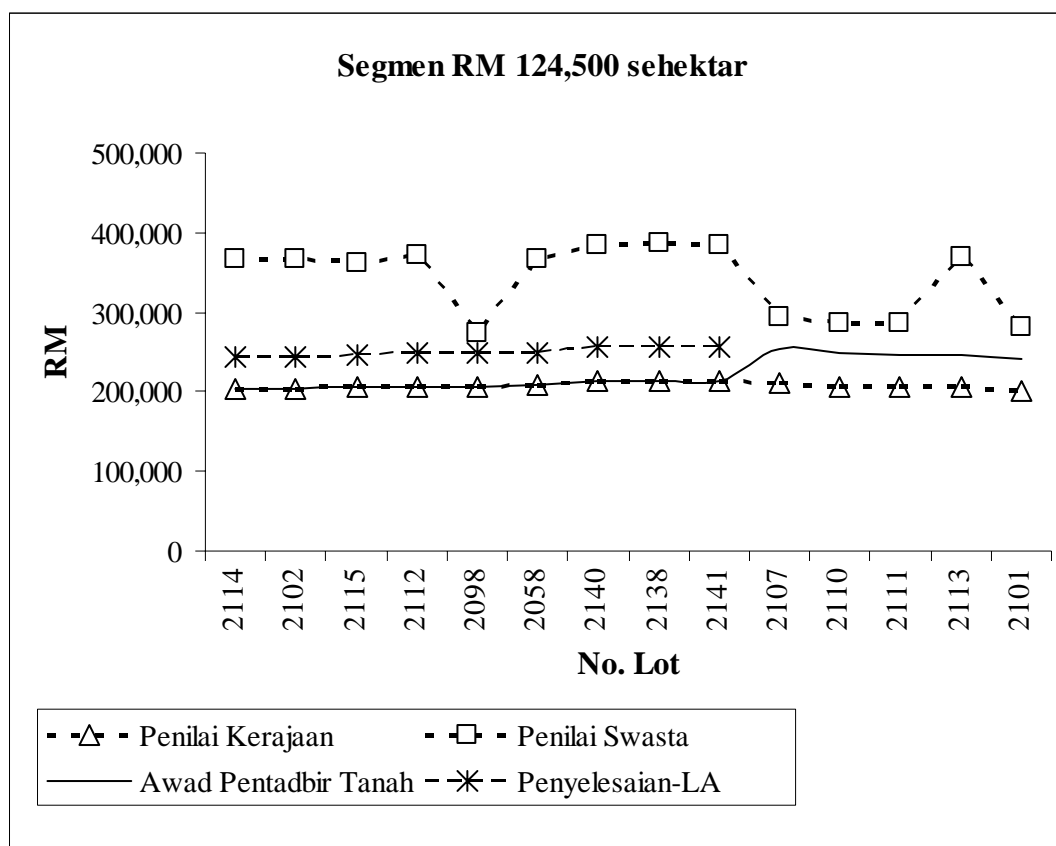


Figure 4.9 : Correlation of Value Discrepancy for Price Segment of RM124,500 per ha

The above figure shows an obvious discrepancy between Public and Private Valuer. However, the discrepancy is smaller than the discrepancy in price segment of RM131,100 per ha.

4.7.2.6 Price Segment of RM86,900 per ha

The last price segment consist of lots priced RM86,999 per ha. There are 10 lots classified into this segment, whereby 8 lots are lease hold for 56 years, which to be ended by 2020's and the other 2 lots are lease hold for 99 years, which to be ended by 2110's.

Lots classified in this segment are lots situated at the middle of whole acquired lot with the acreage of each lot are between 0.2261 and 4.5604 ha. Discrepancy of value in this segment is between 31 and 71 percent. Only one private

valuer hired to prepare the valuation report for this segment. Details of value discrepancy for this segment is shown in Table 4.7 below :

Table 4.7 : Details of Value Discrepancy for Price Segment RM86,900 per ha

No	Lot	Public Valuer (RM)	Private Valuer (RM)	Discrepancy %	Award by Land Admin. (RM)	Legal Adviser Solution (RM)
1	1725	291,888.00	381,786.00	-30.80	379,600.00	
2	1726	147,704.00	209,990.00	-42.17	192,000.00	
3	1727	390,963.00	611,187.00	-56.33	532,700.00	
4	1728	388,608.00	508,300.00	-30.80	505,000.00	
5	1984	176,277.00	300,750.00	-70.61	294,800.00	
6	1986	176,277.00	300,750.00	-70.61	294,800.00	
7	2657	19,648.00	33,522.00	-70.61	32,800.00	
8	2659	35,577.00	60,696.00	-70.60	59,500.00	
9	2661	52,627.00	82,302.00	-56.39	69,000.00	
10	2663	39,070.00	61,105.00	-56.40	51,000.00	

Source : Writer's Interpretation (2005) from Valuation and Report, Public Valuer, Private Valuer, Award by Land Administration and Legal Adviser Solution

Figure 4.10 below shows the correlation of discrepancies in this segment.

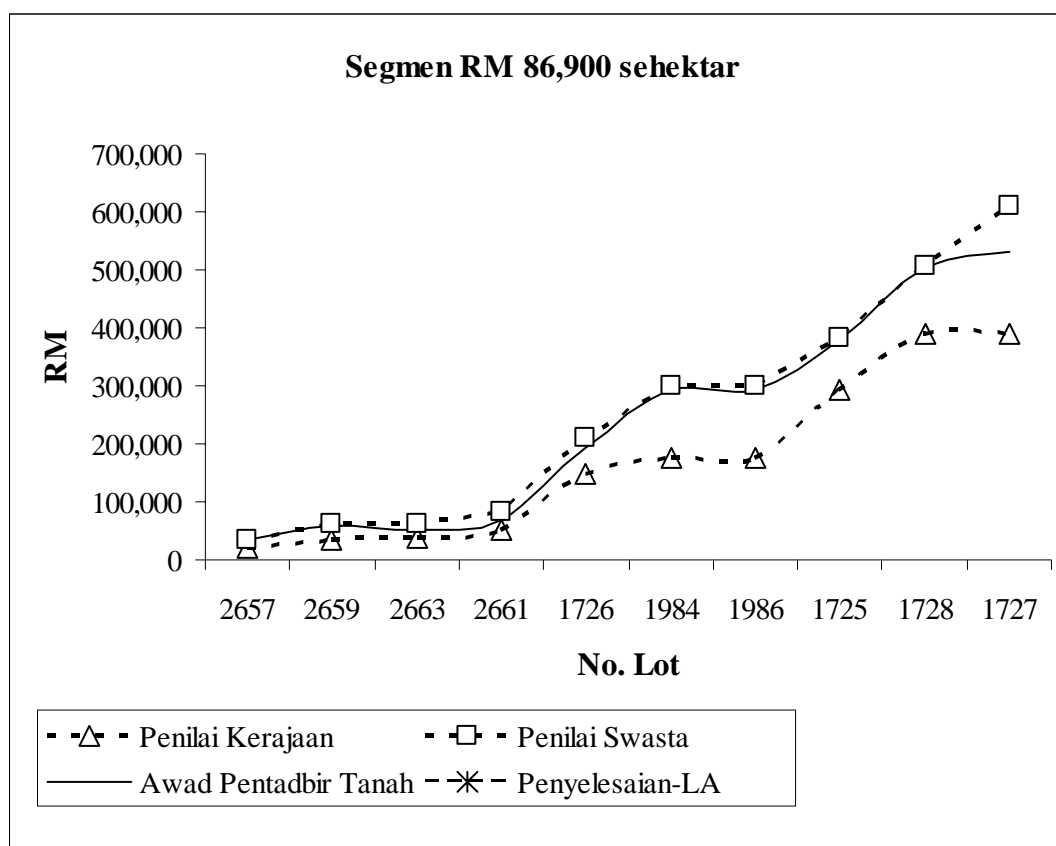


Figure 4.10 : Correlation of Value Discrepancies for Price Segment of RM86,900 per ha

According to the tables and figures shown before, value discrepancy does exist in land acquisition for the development of KUTKM campus. However, only data of lots evaluated by Private Valuer are analyzed into those graph and figures.

The discrepancy is caused of several internal and external factors. However, both Public and Private Valuers are professional, thus the determination of land prices is done with related references and valuation proof.

The next topic will discuss on factors those cause the discrepancy to exist.

4.8 Factors of Value Discrepancy Existence

There are several factors those cause value discrepancy to exist. However, the analysis of this study only focuses on lots which are evaluated by both public and private valuers.

Factors those affecting the market price are different from one area to another area. This study only focuses on reasons of the existence of value discrepancy.

There are several factors have been determine, which will be discussed later on each one of them.

4.8.1 Lease Hold for 99 Years Factor

The main factor that causes value discrepancy to happen is land hold category. The discrepancy can be seen between land with free hold and lease hold.

The analysis done has shown that lease hold of 99 years has become a factor of discrepancy in land valuation. In average, there is a discrepancy of 60 percent between the evaluation by Private and Public Valuer. However, there also some cases where the discrepancy of value is double from the value evaluated by Public Valuer.

The discrepancy exists because of the different sight of valuer onto the lease period. One of the assumptions is that the period of lease will be ended in a short period which is in 2029's. It has caused the Private Valuer to consider the hold of the land as free hold and it would affect their view onto the land value.

Besides that, land acquisition which is done in a large number of lot has caused value discrepancy to happen obviously. Even a little land price movement could cause discrepancies on the valuation by Private Valuer.

4.8.2 Lease Hold for 59 Years Factor

As for lands with lease hold for 59 years, there is value discrepancy of 40 percent between Public and Private Valuers. In average, lands with lease hold for 59 years involved in this acquisition project would end in 2025 and this longer duration had change the perception of Private Valuer onto land.

From the Public Valuer perception, landowner would still lose their land when the lease period ends. However, the Private Valuer's believe that landowners would lose their land due to acquisition and the land deserves to be evaluated according to current land market price.

Analysis has shown that Private Valuer has submitted land value up to 50 percent from the current land market price.

4.8.3 Land Layer Factor

Land acquisition for the development of KUTKM involved a large area of land. Thus, land layer has become one of the factors of value discrepancy existence. Some lots can be at the same location but the layer might be different for each of them. For example bordering at the southern part of KUTKM site is the North-South Highway and near to Yayasan Saad College. Thus, land layer for lands situated at

this area is referred to the highway. While for other lots, reference is made onto other access and roads.

As mentioned before, land acquisition for the development of KUTKM campus involves a large area of land, thus the boundary of north, south; east and west of the site are near to several accesses and roads. Therefore, valuation approach of valuers on land layer would be different from one to another valuer.

Land layer factor has caused value discrepancy of 20 percent between amount claimed and offered by Private and Public Valuers.

4.8.4 Location Factor

Location of land lot is also one of factors contributing to the existence of value discrepancy. As for the development of KUTKM campus, not all lots involved have the same price per ha. Even they are located in the same area as in whole; however the position of the land from other facilities or surrounding area does influence the value of each lot.

Some lots may be located near to developed surrounding area. Therefore, this situation has caused value discrepancy of 5 percent between amount claimed and offered by Private and Public Valuers.

4.8.5 Lot Size Factor

Another factor contributing to discrepancy of value is the size of lot involved. Normally, the smaller the land lot is, the higher the price of the land. It is because smaller lot is easier to be handled.

In average, lot size factor has caused value discrepancy for 5 percent. This is because most of the lots involved are large lots.

4.8.6 Land Use Factor

Land acquisition for the development of KUTKM campus has caused several families to move out from their house. There are some lands are used as agriculture and living area. The use of land could also have an affect on land value.

However, the average value discrepancy caused by this factor is only 5 percent. Good condition of land has helped much in increasing of its value. Value of land would also be different according to its original plantation type.

As for the development of KUTKM campus, land use factor does not affect much on value discrepancy. It is because most of the lands are agricultural land.

Figure 4.11 below shows all factors affecting land value discrepancy between compensation amount submitted by Private and Public Valuer.

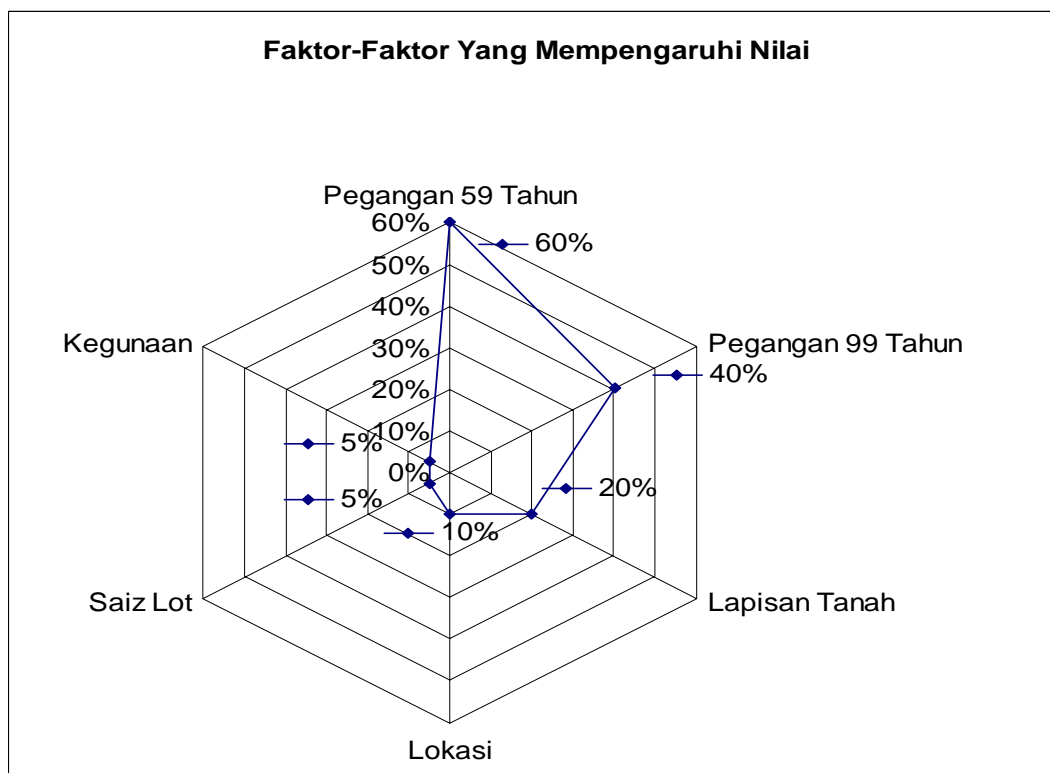


Figure 4.11 : Factors of Value Discrepancy Existence

The combination of these factors show the discrepancy happens in land acquisition for KUTKM campus development. Land characteristics have a great impact on its value. All these factors need to be considered in order to determine land value according to current land market price before considering the value as the valuation proof during compensation claim and offer.

4.9 Main Factor of Value Discrepancy in Compensation Claim and Offer

Based on the analysis and observation on related data and opinion of the Chief Director of Lands and Mines of Malacca, it is identified that the main factor of value discrepancy for land acquisition project is land hold type.

4.9.1 Land Hold Factor

Land hold type had given a big impact onto the discrepancy of land valuation between Private and Public Valuer. Different approach taken by both valuers has caused the discrepancy.

Long period of lease hold which to be ended by 2090's has caused the valuers to evaluate the land based on several of uses. It is because, to the valuer, the land could still be used and developed if they are not acquired. Thus, it also has affected valuer's perception in submitting their valuation.

As for lands with lease hold for 59 years, which to be ended by 2020, the shorter period has given different perception of valuer onto land. Both Private and Public Valuers have different perception onto land value due to land's importance before the lease period ends.

Most of lands acquired for KUTKM campus development are in lease hold. Thus, the main factor affecting value discrepancy in compensation amount claim and offer is the type of land hold itself.

4.10 Conclusion

Even KUTKM campus is still under construction; the land acquisition process has been completed. Therefore, the value discrepancy existed has been determined in this study.

The existence of value discrepancy in this project has shown different approaches and opinions have been taken by both Public and Private Valuers on current land market price. The existence of value discrepancy has also caused the change in land cost estimation for this development project. However, correlation graph line of discrepancy exists in Figure 4.3 and 4.4 have clearly shown that the discrepancy does not due to compensation amount. But this doesn't mean that if the smaller the land lot, the smaller is the discrepancy.

Because land acquisition for KUTKM development is equivalent to the needs of Section 3 (a) of the LAA 1960 which is the development must be for the public purpose, therefore any protest made by interested parties would not stop the acquisition process. Value discrepancies will be handled according to legal provision, which is either through hearing by Land Administrator outside the court or through a proceeding in front of the High Court Judge.

In order to ensure that this study would achieve its objectives, thus two method of data gathering have been taken; which are observation and studies.

Referring to analysis done, it has proved that value discrepancy does exist in compensation claim and offer. It is due to the differentiation of opinions, approach taken and factors to be considered during evaluating lots involved.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

In this final chapter, from the analysis we will conclude the study regarding the valuation method to identify the compensation amount and the discrepancies in compensation claims and offers. The study will propose ways to minimize the discrepancies that will cause problems such as the delaying of project, cost fluctuations and professionalism of related parties.

The main objective of the study is to analyze the valuation method that is being used to identify the compensation for land acquisition. The second objective is to identify the discrepancies in value between Public Valuer, Private Valuer and Award by Land Administrator.

5.2 Study Output

From the study, it is concluded that there is discrepancies in offers and compensation claims on the acquisition of land for the development of KUKTKM Campus in Melaka. This situation occurs when the interested parties sources private valuer for their services in determining the value of claims.

The analysis shows that the comparison method is used to determine the compensation value in land acquisitions. Both Public and Private Valuer use this method in all valuing process. For Public Valuer, the comparison method is used on

overall lots in acquisitions. Meanwhile, for private valuer only 82 lots that is valued under their services.

The Comparison method is used due to the majority of lots affected is agricultural land. According to The Property Market Report of Malacca State (2001), the Alor Gajah district shows the highest transactions number of agriculture property in the state. The identified and suitable transactions can be used as comparison to identify the current land value.

The analysis proves that there are discrepancies in value determined by Public Valuer, Private Valuer and Land Administrator Award. The main factor of the value discrepancies is land hold. It shows that for lease hold lots, both valuers have different views and conclusions especially regarding the term of lease. The lower the term, higher discrepancies are recorded.

Chapter III and IV has explained the first objective in detail the method used to identity compensations. The second objective, which is to determine discrepancies in value between Public Valuer, Private Valuer and Land Office Award, has been explained in Chapter IV.

5.3 Recommendations on Minimizing the Percentage of Value Discrepancies between Public Valuer and Private Valuer

There are a number of proposal that can be applied to achieve the lowest discrepancies between both valuer. This is important to identify the value that is acceptable by all related parties and the current market value of land.

Because both parties use the same comparison method, the proposal outlined is focused on that method. The proposals identified are: -

- (i) Both parties should maximize the use of technology to identify the latest information for comparisons. The use of technology will help to identify the data needed in determining the value characteristics. Apart from that, the importance of human sensitivity is still vital to fulfill the valuing needs.
- (ii) The Valuer should improve their skills in valuing land lots with leasehold by attending further courses. This is important to help them identify the level of importance for each factor before coming into their conclusion and value. With added practice, this skills will naturally developed and improves further.
- (iii) Decisions made on acquisitions cases by the High Court, State Law Advisor and Land Office Award should be the main sources in helping valuer to identify the best value for future acquisition cases. This is because the decisions will create a current market trend that can be used as reference. The value should also be identified using current market conditions due the ever-changing market climate.
- (iv) Some addition onto existing legal provisions in land and acquisition related laws and legislations in order to help both Public and Private Valuers in their valuation. For example, the amendment on valuation method for MRL has done much in assisting the valuers in evaluating that type of land effectively. This is because the provision itself has explained the valuation method should be taken. It could go the same for lease hold lands which have the different balance of period.
- (v) Out of court negotiations should also be used in improving the value process. Negotiations can contribute in improving the level of professionalism in dealing with cases.

5.4 Study Complications

Some complications has been identified during the term of this project, which are listed as follows:-

- (i) Difficulties in obtaining data for effected lots in the acquisitions. Limited permission has been granted by Alor Gajah Land and District Office and Melaka Lands and Mines Office, the information is very limited for data collection.
- (ii) Difficulties in obtaining information on the current status of the main KUKTKM campus project. Observation and study can only be done form the outside the development perimeter. This can be overcome with the cooperation of the developer.

The study covers the acquisitions of the effected lot for the development of KUKTKM, it does not cover the additional or minus lot due to amendments of plan. The acquisition was completed in September 2001.

5.5 Further Study Recommendations

Due to the limited time, an in-depth and detailed study cannot be done. Thus, to further the study, it is suggested to study further on:-

- (i) The study on procedures that can be adopted to identify the minimal value discrepancies and the needs of future markets.
- (ii) To identify other alternative and latest valuing methods to control value discrepancies.

- (iii) To search for the perfect outcome and settlement of value discrepancies in creating a win-win situation for all related parties.

5.6 Conclusion

Land acquisitions by government for public development projects and bring in development to rural areas is much needed. But for cases regarding acquisitions, it usually arise a discrepancy in value due to the claims made by effecting parties demanding a justified compensation for forced to sell their land. They will turn to the services of Private Valuer which fees are paid by the government in accordance with LAA 960 and Valuer, Appraiser and Real Estate Agents Act 1981. These discrepancies arise due to the many views and opinions form both parties of valuer. It occurs because different comparison factors and experience from both professional parties.

Although the discrepancies do not go against any law, the credibility of the valuer and the confidence of the effected party will improve if the discrepancies are kept to the minimum. At the end of the day, every party will win and accept the outcome in good faith.

The situation will also ensure that both valuer make the judgment on the compensation value based on current market conditions. Compensations that meet the demands of the effected party will ensure that acquisition process does not stalled and planned development runs smoothly.

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