

Land alienation in the johor bahru district area: the factors of unsuccessful response of form 5a, national land code 1965

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Abstract. Land alienation in Malaysia constitutes an important element in the conduct and governance relating to the National Land Code (NLC) 1965. However, the alienation is within the exclusive jurisdiction of the state authority and the process of such alienation takes too long including to resolve the requirements of Form 5A, NLC 1965. Form 5A is a notice to the applicant to claim the alienation fees which include the quit rent, premium, boundary mark surveying fees, and preparation and registration of documents of title. Although various methods have been taken to manage the issues of Form 5A, there are still lack of response because several internal and external factors. This study investigates the key factors that contribute to unsuccessful of Form 5A in the Johor Bahru District Area. The study conducted by two kind of methods, interviewing 10 respondents and questionnaire distributed to 229 respondents. The results shortlisted 22 factors and narrowed down into four main factors: lack of money, the rates charged are too high, appeal process for premium reduction, extension period and instalment payments. This study is important to balance the property ownership by considering the emerging issues of land alienation for the urban poor.

1. Introduction

Land legislation in Malaysia under the National Land Code 1965 asserts that the exploration, occupation, construction of buildings on other third-party land illegally is unlawful. Other third-party lands include government lands, government reserve lands, government agency lands, community lands, and private lands [1]. In 2007, in the Johor Bahru district of Johor, a study by UiTM student showed that the squatter population comprised 4,817 families, a total of 19,268 people [2]. The National Land Code 1965 provides that any occupation on governmental land that is unlawful is prohibited and deemed intrusive.

The act of encroaching on government land actually happens almost every day. Most of government land intrusion activities occur because of the need for agricultural activities, residential development, legal difficulty in obtaining land, and the lack of regulatory oversight [3]. The increase and people quality of life around the world influenced by a comfortable residency that is suitable for occupancy. However, housing problems around the world are still difficult to solve, resulting in squatter settlements or land clearing for illegal settlements. Therefore, the authorities make every effort to provide affordable housing to their people, also to ensuring that a country can achieve developed and high-income nation status [4].

The State Government of Johor, has also sought to resolve the squatter relocation problem. Among the policies implemented are land ownership (giving title) to squatters on the trespassed land, granting a Temporary Occupation of Land License to them, relocate squatters to Low Cost Public Housing and People's Housing Project (PPR), build squatter resettlement in new areas, and take enforcement action



against squatters [2, 4]. Granting of Government Land to the people is the beginning of land development. However, before a land granted, an application must be submitted to the state government as the State Authority through the Land Administrator at the District Land Office where the land is located [5].

The Johor state administrator regulation of land use can be explained by several land policies such as the opening of farms for gambier crops and black peppers under the farming system known as the Kangcu System, practices of Surat Sungai production, and encouragement for foreigners to enter Johor [6]. At present, the category of land use is more specific for the purpose of building. The Land Administrator responsible for managing the land use application process of government land until it is brought to the attention of the State Authority. If the State Authority approves, then notice of Form 5A will be issued to the successful applicants.

Form 5A needs to be settled within three months. If applicant failure to pay the Form 5A payment within the stipulated period, the approval will be revoked and the title cannot be issued. Therefore, the re-application of government land should be redone [1]. In fact, this affects the premiums payment and annual taxes that cannot be collected and be used optimally. In addition, the public will respond negatively to the inefficiency of the government for failing to address the issue. The illegal occupation of government land will last for decades and they would enjoy the benefits of the land without paying rent to the government.

The purpose of this study is to identify the actual cause of the increase in the cases of Form 5A being cancelled and why the applicant still failed to resolve it although various methods of appeal for Form 5A payment application were introduced by the government.

2. Background

Form 5A is a notice of payments claim submitted to the State Authority by the applicant upon approval of ownership. These payments include first-year quit rent, premiums, survey fees, boundary marks, plans, and titles that need to be settled within a specified period. If the applicant fails to pay within the period specified in Form 5A or cancelled, then the approval of the State Authority will be revoked and the applicant must reapply [1].

Thus, the government's intention to provide the ownership for residential site would not be achieved and it would only give the applicants temporary approval as a result of their failure to pay the amount as stated in the notice of Form 5A.

These revoked approvals are seen as not helping the people to legally own the land and they will continue to live on the land until re-approval is obtained. This reflects the fact that the government has failed in enforcing the law on government land trespassing. Then the authority loss in terms of time management and revenue of state government such as tax collection and premium payments.

The determination of the methods of notices issuance and calculations in Form 5A varies for each state. In Johor, the Land Rules of Johor (Amendment) (No.1) 2005 which came into effect on 1 January 2005 is applied as an additional reference to the Land Administrator. Furthermore, the Land Administrator also needs to refer to the current circular which is in force issued by the Director of Lands and Mines of Johor as a guide to issue a notice in Form 5A.

Through the disposal of the land, the State Authority will receive state revenue through the annual rent and premium payments. The calculation is subject to the category of land use as well as any specified conditions and restrictions of interests. The payment claims and the terms will be communicated to the successful applicant through the issuance of the Notice of Form 5A.

The duration set for the payment in the notice of Form 5A is three months from the date of receipt of the notice by the applicants or their representative [1]. If they are unable to settle the payment, the applicants may: appeal for a reduction of the premium, apply for instalment payment, or apply to extend the payment period of Form 5A. In certain cases, the Land Administrator may grant the applicant an extension of the term for another three months if the applicant propose before the expiry of the first three months with reasonable grounds [7].

2.1 Payment Procedures of Form 5A

Before Form 5A is issued to successful applicants, there are some items that need to be fixed first, including the calculation of premium payments, the calculation of additional premium payments, and other fees imposed in accordance with the approval requirements decided by the State Authority in the State Executive Council [1].

The Land Administrator will receive a decision letter of the State Authority from the Director of Lands and Mines of Johor regarding the approval of the ownership on whether or not it has passed. Upon approval, the Land Administrator will ask the Department of Valuation and Property Services of the state to determine the price of land in accordance with the current market. The Land Administrator will charge a premium based on the percentage rate set by the State Authority and the market value of the land as determined by the Department of Property Valuation.

The fees to be charged and included in the notice of Form 5A are Premium Fees, Additional Premium Fees, and other fees. Other fees in question are annual quit rent (for first year quit rent), land survey fees, boundary marking payments, plan preparation fees, and ownership registration [1]. The First Year Tax in Notice of Demand 5A is set using new land tax rate set in J.P.U. 95. Payment Rates such as premiums, land taxes, and additional premiums in the Notice of Demand (Form 5A) use the new payment rates as set under Table 6 of the Johor Land Rules [8]. Once the calculation is entered, the notice will be sent to the successful applicant in accordance with the notice delivery method provided in the National Land Code 1965.

Applicants who receive the notice of Form 5A must certify the receipt and pay according to the stipulated duration and payment conditions [1]. Following the payment of Form 5A by the applicant, the Plan Designer at the Land Administrator's office will submit a survey application to the Department of Survey and Mapping of Malaysia for the survey works and planting of the boundary markers. At the same time, a temporary title registration is made and issued to the applicant.

Holders of Form 5A can also hand over their approved land to others if they are no longer interested in the land. The original holders of Form 5A will need to issue a letter of surrender to the new applicant if they wish to surrender the land. New applicants must submit their application along with a letter of surrender from the original approval holder of Form 5A to the Land Administrator to be brought to the State Authority for new approval [9]. The Letter of Consent is important to prevent disputes between the applicants as results of investigations on some land application cases found there were elements of construction such as houses, plants, and others that had been explored by the original applicants.

The Land Administrator is authorized to re-approve the land for which Form 5A has been revoked provided that the application is made by the original approval holder. The Director of Lands and Mines of Johor is authorized to re-approve the application by the original beneficiary. This authority is given to the Land Administrator and the Director of Lands and Mines of Johor for notice of Form 5A which has been revoked not later than five years from the date of issue of Form 5A. For a period exceeding five years, re-application by the original approval holder or beneficiary must be considered by the State Authority. After the expiration of five years, the land can be applied for by any other applicant [10, 11].

2.1.1 Determination of Land Premium Payment Rate

Land premiums are payments charged by the State Authority according to the rate of land area to applicants whose land applications have been approved for the purpose of land ownership, modification of land conditions, modification of land restrictions, and modification of land category [7]. Land premiums are one of the few non-annual taxes imposed by the State Government where premiums are paid when applying for change of land ownership or land use [12].

The percentage rate determined by the State Authority for the purpose of residential areas outside the Malay Reserve area is 15% for a 60-year lease term and 30% for a 99-year lease. The percentage set for residential purposes within the Malay Reserve area is 7.5% for a 60-year lease and 15% for a 99-year lease. The State Authority may also set land premium payments on a nominal basis according to the application types.

2.1.2 Determination of Additional Land Premium Payment Rate

Additional premiums are imposed on the applicant under certain circumstances. Typically, a land whose lease term has expired will automatically become a government land. Hence, the original owners cannot and will be restricted from paying the annual rent to the government until they apply to renew the lease term and regain ownership as per the law. In this case, the computation of additional premium payments charged will be calculated based on unpaid taxes since the ownership was revoked until the land is approved for new ownership.

This Additional Premium Payment is also imposed on settlers or invaders of the government land, which is based on the annual tax that has not been paid since they occupied the land until their application is granted approval of ownership. This case is different from the ownership that the lease has expired because the applicant does not yet have the title.

Moreover, the Additional Premium Payment applies to government land applicants who have a Temporary Occupation of Land License on the land in question in the event of outstanding and unpaid license fees. Additional Premium Fees are calculated based on the outstanding period.

Additional Premium Fees also apply to government land applications whose ownership have been revoked as a result of the confiscation under Section 100 of the National Land Code 1965 due to the failure of the original owner to pay the annual tax. The additional premium charged is calculated based on the amount of arrears as stated in the Notice of Demand: Arrears of Rent (Form 6A) which has been submitted to the original owner.

2.1.3 Other Fees

Other fees incurred in Form 5A are annual quit rent, land survey fees, boundary marking payments, payments for the preparation of plans, and the preparation fees for registration of title. The preparation fee for the registration of the title is for temporary and permanent ownership.

The annual quit rent (land tax) included in Form 5A is for the first year tax only. This annual quit rent is determined by JPU 95 dated 16.12.2004. Land tax is an annual tax imposed on people who own land regardless of the type of land, land tenure, and land use that the owner or heirs are obligated to pay [8, 13].

The survey fee is RM 250.00 while the boundary stone is RM 5 for each point of the boundary stone as shown in the title plan. The fee for preparing the plan is RM 10.

The fee for the preparation and registration of temporary and permanent titles is RM 40.00 each.

2.2 Method of Payment Application Appeal of Form 5A

In Johor, various administrative orders were circulated through the circular of the Director of Lands and Mines of Johor on the methods of appeal of Form 5A payments as approved by the government and issued to Form 5A approval holders to help them settle the full payment to obtain the title. Among the permitted methods are appeals of reduced premium payments, instalment premium payments, and payments to trust accounts while seeking the State Authority's new approval for a revoked 5A notice.

2.2.1 Appeal of Reduced Premium Payment

Form 5A approval holder (applicant) is allowed to appeal for premium reduction only twice. If the appeal for a reduction of premium payments is rejected for the first time by the State Authority, the applicant can make the second appeal directly to the Menteri Besar of Johor. If the appeal is rejected a second time, and the applicant appeals a third time and fails to settle Form 5A, the Land Administrator may reject the appeal on a 'summary rejection'. If the applicant is approved for a reduction in premium payment, the applicant must pay it according to the new notice period and not be allowed to extend the payment period for the new Form 5A [13]. However, not all Form 5A approval holders will apply for a reduction in the land premium rate as the applicants' knowledge of this method is low. They need to be exposed to be aware of the right to make the appeal if they are not satisfied with the amount of premium charged [7].

2.2.2 Instalment Premium Payment

Applicants who are less capable can pay premiums on Form 5A in instalments. This application must be made in writing to the Land Administrator before the expiration of three months from the date of Form 5A Notice. The application for premium payment in instalments is to be considered if it meets the requirement of the stipulated premium rate which is, for agricultural land category to be more than RM 1,000, building category is more than RM 3,000, and industrial category is RM 10,000 and above. An additional payment of 5% of the premium will be charged as a service charge to the applicant for the agricultural land application category and 8% for other than agricultural land. The number of instalments allowed is only four times and must be fully paid within 12 months only [14].

2.2.3 Trustee Payment for Reapplication of Revoked Form 5A

The notice of Form 5A which has been revoked causes the title to not be issued and occupation of the land is unlawful. However, the applicant still has the opportunity to re-apply for the land based on the original approval. This application must be considered as the original application which is to re-apply by filling out Table 1 Form, preparing the land report, bringing it to the consideration of the State Authority and if it is approved then the revaluation of land at the market price will have to be redone if the previous evaluation exceeded three years.

Before the re-application is made, the original approval holder (applicant) must pay the amount of Form 5A previously approved to him. This money will be credited in the Trust Fund Account. If approval is received, the adjustment of the land premium valuation will be based on the current land valuation set by the Department of Property Valuation and the applicant must settle the additional surcharge in the event of an increase in the current land market prices. New calculations will be made and new Form 5A notices will be issued to successful applicants. The amount previously paid into the Trust Fund Account will be withdrawn and made into government revenue. If the applicant fails to obtain the new Form 5A approval, the payment made previously by the applicant will be refunded.

2.3 Internal Factors Against Payment Arrears of Form 5A

Among the challenges in land administration management is the method of identifying delay issues in land management itself. Some aspects of arrears of land ownership stem from four things: the staff lacks knowledge of the procedure, high task load, there is no monitoring by the officer on the movement of the application file on a sudden or periodic basis, the procedure is not identical [15]. There are four aspects to the delay in the Public Land application process: long and weak procedure, the human resource that is the lack of staff and the lack of knowledge and experience, applicant's eligibility and the system for the applicant information still operates the manual method [16]. Attitude factor is a major factor leading to arrears in land tax although various interesting efforts to encourage payments have been made. Owners' negligent attitude can only be dealt through the enforcement of the law under Section 100 of the NLC 1965, which is the act of land forfeiture [13]. The researcher lists several factors of payment arrears based on previous studies. The factors categorised into management and administration of the land office (internal factors) and the applicants themselves (external factors). These factors are taken into account in the formulation of the questionnaire form developed for actual data collection.

3. Method

This study was carried out as a case study at the Land Office of Johor Bahru to obtain actual data and to identify the internal factors to the arrears of Form 5A payments in the district of Johor Bahru. Preliminary data show that the district of Johor Bahru has the highest number of receiving government land applications in 2012 to 2014 compared to other districts due to its rapid development. The Land Office of Johor Bahru has the roles of support and coordination among other development agencies in addition to carrying out its responsibility to process all land-related applications, collect revenue for the state government of Johor and administer laws related to land. The office is led by a Land Administrator and is assisted by a number of assistant officers and support officers for the administration of seven mukims covering 106,603.9 hectares. The office has eight divisions, namely, the Administration,

Registration, Revenue, Disposal, Enforcement & Technical, Information Technology, and Land Law. The sections that are directly involved in the issuance of Form 5A are the Land Development Division and the Land Disposal Division. The Land Development Division manages the affairs of the Refund Grant application as well as the Change of Conditions application. Whereas the Land Disposal Division manages land applications for the purpose of ownership. However, this study specifies only the study of Form 5A for the purpose of ownership only.

The study was conducted qualitatively and quantitatively. Qualitative study was conducted to obtain data on internal factors related to the issue of delayed issuance of Form 5A, using interview approach with the officers of the Land Office of Johor Bahru who are involved in managing Form 5A issuances. A total of 10 involved respondents were involved from the Management and Professional Group: the Assistant Land Administrator of Land Disposal (Respondent 1); two unit heads consisting of the Support Group who is the Head of Land Disposal (Respondent 2) and the Head of Grants Division (Respondent 3); and seven clerks who are also a staff member of the Support Group. They were selected based on their extensive role and experience in the field of government land applications for the purpose of ownership, particularly that related to the issuance of Form 5A.

Table 1. Background of Respondents

	Variables	Number	Percentage
Gender	Male	155	68%
	Female	74	32%
Ethnic	Malay	229	100%
Age	35 and below	49	21%
	36 – 55	150	66%
	56 and above	30	13%
Occupation	Professional	21	9%
	Support / executor	46	20%
	Laborers / subordinates	132	58%
	Not working	30	13%
Household income (RM)	2,000 and below	61	27%
	2,001 – 4,000	149	65%
	4,001 and above	19	8%

Quantitative study was conducted through questionnaire to those whose Form 5A were approved but have not made any payment. The data obtained here are the external factors to arrears of payment of Form 5A. The respondents consist of government land applicants who have obtained government land acquisition approval and were given Form 5A but have not paid it within the timeframe. These respondents include those who are currently appealing for premium reduction and instalment payments. The total number of respondents is 229 covering all the areas in the Johor Bahru district i.e. Pulai area 11 people, Tg. Kupang area 38 people, Jelutong area 8 people, Plentong area 66 people, Tebrau area 39 people, Bandar area 13 people, and Sg. Tiram area 54 people.

4. Results and Discussion

This section presents qualitative and quantitative findings on the internal and external factors of the unresolved Form 5A arrears. Internal factors consist of government policies, procedures, and land office staff. External factors are caused by the public or customers coming to the office.

Based on previous case studies related to arrears of government land application cases and qualitative studies via interviews, it listed 22 internal factors and proposed several external factors as listed in the following table.

Table 2. External and Internal Factors of Arears of Form 5A Payment

No	Internal Factors	No	External Factors
1.	Lack of knowledge among staff	13.	Incomplete application/information
2.	Varying instructions and procedures	14.	Applicants do not understand the procedures
3.	High task load	15.	Applicants do not know that a premium would be charged
4.	Ad-hoc duties	16.	Applicants do not know that the approval will be cancelled
5.	No specific monitoring/supervision	17.	Instalment action
6.	Long and weak procedures	18.	Advanced/less premium appeal action
7.	Ineffective process that requires help from others	19.	Applicants do not receive notice
8.	Lack of number of jobs	20.	Applicants do not know what to do
9.	Increasing number of applications	21.	Applicant has no money
10.	No special computer systems	22.	Applicant has no source of funding
11.	High premium rates		
12.	Short time		

Through a quantitative study using questionnaire forms to the holders Form 5A approval, a total of 229 people provided feedback on the 22 factors above. Through the analysis of the data, the main factors contributing to the arrears of Form 5A are shown in the following table.

Table 3. Major Factors of Arrears of Form 5A Payment

Factor Type	Factor	Respondent		Percentage (%)	
		Agree	Disagree	Agree	Disagree
Internal Factors	1. Very High Premium Rate	205	24	90	10
	2. Very Short Payment Period	125	104	55	45
External Factors	3. Applicant Has No Money	206	23	90	10
	4. Applicant in Appeal Application Action	162	67	71	29

Table 3 shows that the highest is the external factor which is applicant with no money where a total of 206 respondents out of 229 respondents agreed, contributing 90%. The second highest factor was the internal factor which is very short payment period with 205 respondents agreed, showing 90% agreement. The third highest factor is the external factor which is applicant in the action of appeal application with 162 respondents agreed, covering 71%. The final factor is the very short payment period with 125 respondents showing 55% agreement. From the demographic characteristics of the respondents shown earlier, it is true that the majority of the household income of the applicant (respondents) is low and consists of laborers.

Based on the identified factors, it can be verified that those factors are the cause of the problem being studied. Therefore, several solutions are suggested to assist in finding a solution to the arrears of Form 5A payments. A majority of respondents indicated that they had to use their own money to pay for Form 5A payments. Similarly, the analysis also shows that most of the applicants work as laborers and involved in support groups and indicate that the total household income is within RM 1000 – RM 4000. Given the high cost of living nowadays, the situation is even worse. Accordingly, some suggestions for financial assistance are highlighted, which are given the opportunity to use their EPF to settle the Fees of Form 5A or to apply loans from bank.

5. Conclusion

The process of land application until the issuance of the Form 5A notice for the purpose of ownership of the land discussed has shown the complexity of the existing procedures and involves many of the current regulations apart from involving several parties. It is advisable for applicants to settle their Form 5A within the stipulated period and if they are unable to, they can apply for a reduction in premiums or apply for an extension of payment period or instalment payment. If the applicant still could not successfully settle the payment by the various methods, then the applicant will face issues such as cancellation of approval which may result in other cases such as invasion of government land, resulting in an increase in outstanding land application files and delaying the process of resolving cases of land applications at land offices, and the state governments are not able to use collected revenue optimally.

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