



UTM
UNIVERSITI TEKNOLOGI MALAYSIA

www.utm.my

Planning Land Disposal

Adibah Awang

UTM Geo-Law Research Group

INSPIRING CREATIVE AND INNOVATIVE MINDS

Content :

- What is land disposal?
- What type of land that can be dispose?
- Why disposal?
- When disposal?
- How disposal of land?
- Why the need to plan land disposal?



What is land disposal?

- s.5 of the National Land Code 1965 defined “disposal” as any disposal of land made by the State Authority in the exercise of any of the powers conferred by section 42 or of any of the corresponding powers conferred by any previous land law,



What type of 'land' that can be dispose?

Section 42 (1) NLC :

- 'State Land' defined under s.5—as all land in a State including river bed, foreshore and sea bed in a state BUT not alienated land, reserve land, mining land and forest reserve.



Rights & powers of the State Authority

- Disposal
- Reversion
- Planning land use
- Land development
 - Forfeiture
- Imposition of quick rent, premium, levy
 - Land Acquisition



Why land disposal?

- As land & its resources vested solely with the State Authority (SA), it is conferred with the power to dispose of land by alienation i.e. issuance of title and by issuance of permit, license & reserving state land for public purpose
- Hence, creating private ownership of land or “alienated land” and private land occupation i.e. Temporary Occupation License (TOL), permit to extract & remove rock material, permit to use air space, lease of reserve land to individuals.

How land dispose?– Division II NLC

- **Disposal by alienation (Part Five, Chapter 1 – 3) & Part Five (A)**

1. Disposal by alienation s.76-92)
2. Disposal by alienation of underground land (s.92A – 92I)

- **Disposal other than by alienation (Part Four, Chapter 1-4)**

1. Reserve land s.62- 64
2. Temporary Occupation License (TOL) s.65-69
3. Permit to remove rock materials s.70-75
4. Permit to use air space over state land & reserve land s.75A-75G



Why land disposal important?

- It determines a person rights to land - ownership rights and occupational rights over land
- It determines the tenure
- It is a souce of revenue to the state – premium, rent (land tax), fees
- It control land use by the imposition of condition to land
- It control how the landowner deals with his property by imposition of restriction in interest



UTM
UNIVERSITI TEKNOLOGI MALAYSIA

www.utm.my

Therefore :

- Need to plan disposal of state land

The laws on planning land disposal in Malaysia

- National Land Code 1965, ascertains types of disposal, land use, tenure & ownership
- Town & Country Planning Act 1976- ensure that development of town & country conform to the statutory plan – sustainable development



Whether SA when exercising its powers of disposal under the NLC need to comply with TCPA 1976

- No provision under the NLC nor TCPA or legislation
- S.108 of the NLC in dealing with the powers of State Authority in imposing condition and restriction in interest on land, in the event of conflict with that of the planning laws under the TCPA, the planning laws cease to apply & the condition/restriction of interest prevails.



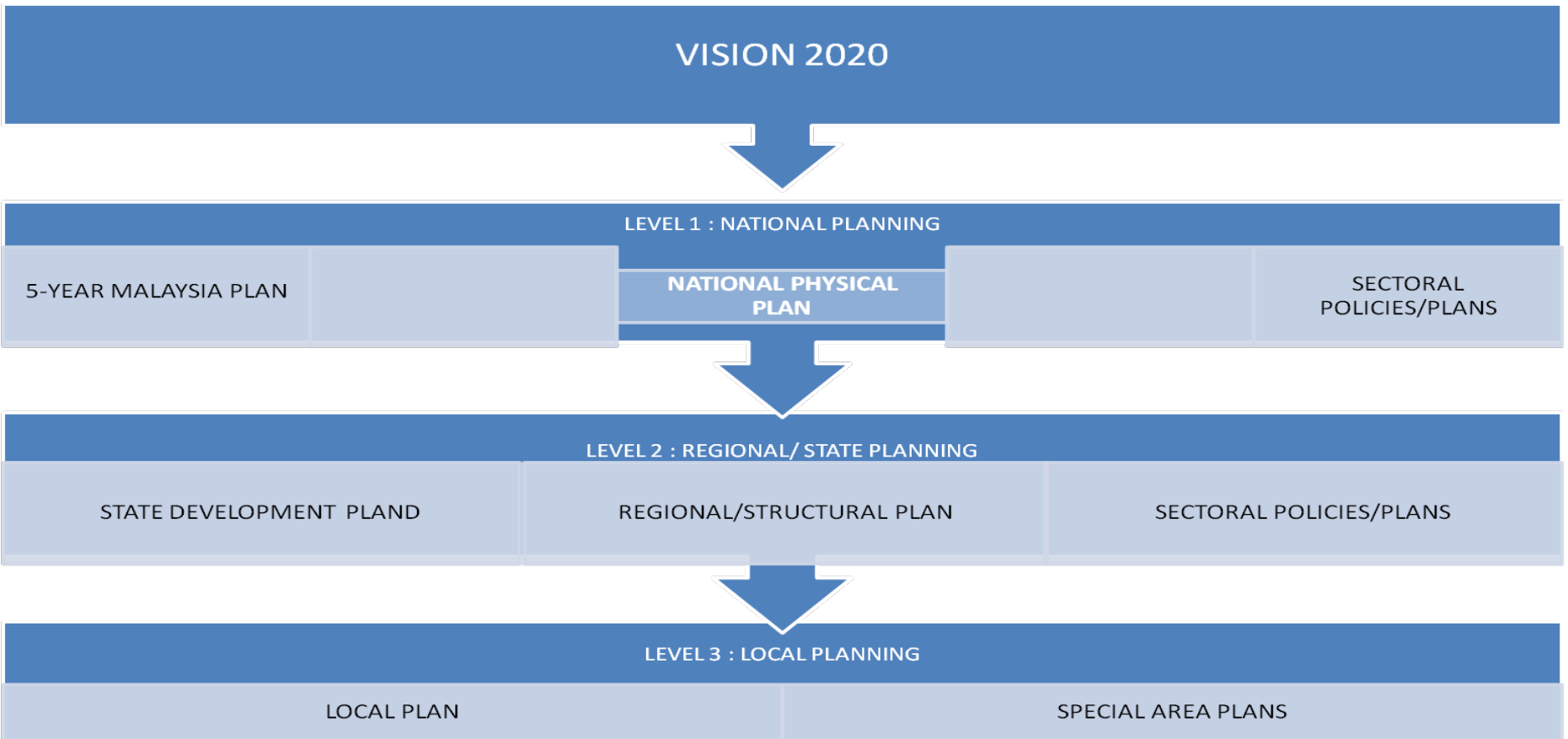
UTM

UNIVERSITI TEKNOLOGI MALAYSIA

Malaysia: National Development Planning Framework after 2001 (perancangan pembangunan fizikal & sosio-ekonomi)

Source: Federal Department of Town & Country

Planning



Issues:

- Encroachment or trespass of state land especially in strategic location – squatters in urban areas
- Though law on adverse possession clear in Malaysia, infringement of these laws are rampant
- Scarce state land for development purposes- have to resort to land acquisition- expensive



UTM
UNIVERSITI TEKNOLOGI MALAYSIA

www.utm.my

Provision on adverse possession under NLC

- S.48 NLC – No adverse possession against the State, no title shall be acquired by possession, unlawful occupation or occupation under any license for any period whatsoever
- **Section 341. Adverse possession not to extinguish titles or interests.**
Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Act 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.



Sidek bin Haji Muhammad & 461 ors
lwn K'jaan Negeri Perak dll. (1982)
1MLJ 313,FC

- Related provisions discussed in the case : S. 46, 78, 341 & 425 NLC



Fakta kes

Bbrp orang dari perayu datang ke Telok Anson dari Kedah, Perak Utara & Selangor & membuka sbhg besar dari satu kaw. hutan. Mrk adalah setinggian & kemudian ramai lagi setinggian mengikut mrk Terdapat perjumpaan diantara penduduk setinggian ini ini & pegawai2 k'jaan dimana didakwa bhw Pengarah Tanah & Galian mengatakan bhw setiap keluarga dari peneroka akan menerima 5 ekar tanah padi. Terdapat juga bbrp artikel di akhbar Utusan M'yu, k'jaan negeri bersedia membuka sehingga 10,000 ekar tanah untuk dimajukan oleh penduduk setinggian itu. Lama kelamaan bbrp orang penduduk setinggian diberikan 3 ekar tanah ttpi yang lain termasuklah perayu tidak berjaya. Mrk membawa tindakan mahkamah untuk satu deklarasi bhw mrk berhak dibawah undang2 & ekuiti ke atas lot yang mrk terokai, buka & tinggal. Resp. memohon di bawah Perintah 18 peraturan 19 Peraturan2 Mahkamah Tinggi untuk menolak & membatalkan tindakan perayu atas alasan perayu adalah setinggian & adalah menjadi budibicara hanya kepada PBN sahaja untuk b/milik tanah. Mahkamah Tinggi menerima permohonan responden & perayu merayu ke Mahkamah ini.



CONCLUSION

- There is a need for an integrated planning and management of disposal of land so as to fulfill the sustainable development concept as propagated by the Town and Country Planning legislation and also Malaysia Vision 2020.
- Brunei land alienation policy of alienating land under her TOL is a good example of resolving housing problem to landless whereby land for housing purposes is alienated under TOL and after a certain period of time the TOL will be converted to title so as to convert land occupation to land ownership.
- There is a need to introduce the concept of ihya' al mawat which is similar to the Common law adverse possession where long uninterrupted occupation of land, is given ownership rights on the basis that he who clear & develop the land without any form of adverse claim, will be given ownership rights.



UTM
UNIVERSITI TEKNOLOGI MALAYSIA

www.utm.my

THANK YOU.

INSPIRING CREATIVE AND INNOVATIVE MINDS