

**FEDERAL LAND ADMINISTRATION:
A PROPOSAL FOR RESTUCTURING THE FUNCTIONS OF THE FEDERAL
LANDS COMMISSIONER AND THE DEPARTMENT OF DIRECTOR GENERAL
OF LANDS AND MINES**

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ABSTRACT

This paper illustrates the need for a restructuring of the roles of the Federal Lands Commissioner and the Director General of Lands and Mines towards a better administration and to enhance the development of experts in land administration in Malaysia. A research is, therefore, proposed to investigate the legal provisions and the administrative shakeups to provide the legal power to these officials in executing their functions for a better management of Federal Lands and the molding of a highly skilled land administration. The study was done based on the legislations that are in place i.e. the Federal Constitution of Malaysia, the National Land Code 1965 and the Federal Lands Commissioner Act 1957 (Act 349) with the guidelines, circulars and procedures that are practiced by the Department of Director General of Lands and Mines Federal to determine the functions and roles. Information obtained through literature were supported by interviews of senior DGLM officials to enhance the findings. Through the initial observation from the literature and interviews it is found that the functions of the Federal Lands Commissioner and the Director General of Lands and Mines have to be separated. This is to provide better service delivery and to improve the land administration of the country in general. Recommendations to follow through this idea has to be coupled by legislative amendments to provide more power to the Federal Lands Commissioner in the area of management and accountability while amendments to the provisions subjecting to the functions of the Director General of Lands and Mines have to incorporate elements of human capital development and emphasis on electronic land administration.

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Keywords- *Federal Lands Commissioner, Director General of Lands and Mines, rebranding, restructuring.*

ABSTRAK

Kertas ini membincangkan keperluan untuk menstruktur semula fungsi dan peranan Pesuruhjaya Tanah Persekutuan dan Ketua Pengarah Tanah dan Galian Persekutuan untuk memantapkan pentadbiran tanah dan membentuk pakar-pakar dalam pentadbiran tanah Malaysia. Satu kajian dicadangkan untuk menjiasat peruntukan perundangan dan penstruktur semula institusi untuk memberikan punca kuasa kepada pegawai-pegawai dalam melaksanakan tugas-tugas mereka dalam Pengurusan Tanah Persekutuan dan mengacu pakar-pakar pentadbiran tanah. Kajian ini dilaksanakan berdasarkan peruntukan-peruntukan Perlembagaan Persekutuan, Kanun Tanah Negara 1965 dan Akta Pesuruhjaya Tanah Persekutuan 1957 (Akta 349) yang menyentuh punca kuasa Pesuruhjaya Tanah Persekutuan dan Ketua Pengarah Tanah dan Galian Persekutuan. Kajian terhadap prosedur-prosedur yang sedia ada terhadap pengurusan tanah persekutuan dan pentadbiran tanah negeri dilihat bagi mendapatkan mendapatkan perhubungan dengan perundangan sedia ada. Bagi menyokong maklumat-maklumat yang diperolehi, temuramah dengan beberapa pegawai-pegawai kanan di Jabatan Ketua Pengarah Tanah dan Galian Persekutuan dilaksanakan untuk mendapatkan maklumat tambahan. Hasil penemuan awalan kajian, jawatan Pesuruhjaya Tanah Persekutuan dan Ketua Pengarah Tanah dan Galian Persekutuan perlu diasingkan bagi membolehkan pemantapan pengurusan tanah persekutuan dan pentadbiran tanah Negara secara keseluruhan. Cadangan ini perlu disokong dengan pindaan perundangan bagi memberikan kuasa-kuasa tambahan dan akauntabiliti kepada jawatan Pesuruhjaya Tanah Persekutuan dan bagi jawatan Ketua Pengarah Tanah dan Galian Persekutuan perlu diselitkan dengan keupayaan dalam pembangunan modal insan untuk membila kepakaran dalam pentadbiran tanah dan dipadukan dengan perkembangan teknologi dalam pentadbiran tanah secara keseluruhan.

I. INTRODUCTION

Lands which are used to build schools, hospitals, police stations, army bases, fire stations, public highways, higher education institutes, Federal Government buildings and public purpose infrastructures which are held by the Federal Government in the form of reserves and titles registered under the name of Federal Lands Commissioner (FLC). The position of the FLC was created by the Federal Lands Commissioners Act 1957 (Act 349) upon the independence of Malaya. Act 349 was created has a transitional legislation to vest all movable and non movable properties of Her Majesty the Queen of Great Britain which were obtain under the Chief Secretary (Incorporation) Ordinance 1949 (Ord.5 of 1949) to the Government of Malaya then. And since then Act 349 is being used as the legislative vehicle for the Federal Government of Malaysia to hold land.

The position of the Director General of Lands and Mines (DGLM) was created in accordance with the adaptation of the National Land Code 1965 (Section 6 till 8 NLC 1965) which has duties to assist the National Land Council in initiation of action with respect to certain policy matters in land administration in Peninsular Malaysia (except in Sabah and Sarawak where the Sabah Land Ordinance and the Sarawak Land Code is used and does not recognizes the DGLM). Prior to the amendment of the National Land Code via Act A 587 and Act A 832 respectively, the DGLM was previously known as “the Federal Commissioner” and appointed under the Federal Lands Commissioner Ordinance 1957. The overall functions of the DGLM were to consult, coordinate and standardize land administration matters in Peninsular Malaysia.

Presently the function of both officials are held by the same person, who is a public servant appointed by His Majesty the Yang Di-Pertuan Agong. Has the demand of both functions at the present environment escalates, it is only wise that the functions of these officials be separated and governed by a new structure that gives emphasis on federal land administration and development

of human capital in land administration to stimulate Malaysian land administration towards greater heights.

This paper discusses the legislative limitation and administrative problems that will hinder better administration of federal land and the development of experts and professionals in land administration. The need of rebranding (restructuring) and targeting specific areas will assist in developing a complete organization that does not lack in professionalism and becomes a role model to State Land Offices to follow. The study will involve the review of the existing structure of FLC and DGLM and the future expectation of the organization.

II. PROBLEM AND OBJECTIVES

The research is proposed based on the following gaps:

- The need arises for greater legal prowess and efficiencies in regulating, administrating and enforcement of federal lands.
- The slow transformation of administration of Federal Lands from a semi automated environment to an integrated internal electronic environment due to the independent data management within the department, lack of support legally, financially and standardized procedures.
- A complicated data retrieving mechanisms subdues the efforts to enhance the efficiencies of service delivery and enforcement.
- The heavy dependencies of decisions of political masters deter the improvement in administration of federal land ala corporate organizations.
- Insufficiency of trained expertise in land administrations reduces the dependencies of State Land Administrations towards DGLM. These are early signs of the redundancy of the department in the near future.
- The lack of human capital building in land administration makes business process reengineering and legislative enhancement rather difficult and substandard.

- Leadership qualities come with skills and experience to spearhead the course of the department. This essential element lack within the department and dependencies towards a select group of administrators shows the weakness of the department as a whole.

The objectives of the proposed research are developed based on the following guiding principles for rebranding both positions:

- Efficient delivery of services in the area of administrating federal lands.
- Capably to provide improvement in the area of business process reengineering, enhanced legislative improvement and consultancy services for the Malaysian Land Administration System.
- Enhanced, complete and integrated database of federal lands information to assist in administration and decision making.
- The legal framework that gives ability to the Federal Lands Commissioner and the Director General of Lands and Mines to make decisions and make changes towards the betterment of Federal Lands and land administration has a whole
- Provide infrastructure and modules for enhancing human capital and creation of expertise groups for the continuity of a high standard of land administration in Malaysia.

Thus, the objectives and scope of the proposed research have been derived as follows:

- a. To investigate the existing functions of the Federal Lands Commissioner prescribed in the Federal Lands Commissioners Act 1957 (Act 349) and the Director General of Lands and Mines prescribed in the NLC 1965.
- b. To identify the legal shortcomings of both acts and suggest way to enhance the legislations.
- c. To suggest a more specified functions of both positions to improve the delivery system in the area of administration, information development and structural organization.

- d. To suggest the component of human capital building in the recommended structure.

III. BACKGROUND

Since the introduction of the National Land Code 1965 the functions of the Federal Lands Commissioner (FLC) and the Director General of Lands and Mines (DGLM) has been held by the same person. His Majesty the Yang di-Pertuan Agong appoints any public servant under Section 3 of Federal Lands Commissioners Act 1957 (Act 349). The position of the DGLM is derived from section 6 of the National Land Code 1965 (Act 56 of 1965) (NLC 1965) which states that whoever is appointed has the FLC assumes the power of the DGLM.

This unique coexistence of two positions under one official creates a vast responsibilities and administration duties. The FLC is the custodian of Federal Governments movable and unmovable properties, where else the DGLM acts as the coordinator of land administration between the Federal Government and State Governments. Emphases on these two functions are manifested by the importance given by the official who occupies these posts. It sways from one way to another depending on the political or administrative pressures of the administration of the day.

This scenario has somewhat deterred the service delivery of the functions stipulated by these positions. The drive for improvement in data management, enhancing work procedures and expertise building is not forceful or satisfactory. The lack of concentration on issues or functions has made the department a living dinosaur in the age of modernity. The lack of skilled land administrators or experts is a major sign that the functions of the FLC and DGLM is not carried out fully.

Human capital is a major woe in land administration. As a coordinator and catalyst of improvement in land administration in Malaysia, DGLM has not provided many major enhancements due to the lack of strong commitments of top management and the understanding of land administration within the staffs in the organization. The need to develop a sustainable expertise resource has to be a major policy of the DGLM to see the organization's existence in the future and compatible with other international land administration organizations.

The lack of legal power of the FLC in advising the Federal Government in procurement of properties, provides avenues to many federal government agencies to make impractical decisions. These has led to many undeveloped lands in the hands of the Federal Government. The lack of integrated information reduces the efficiency in making correct decisions and providing advice to the Government.

Hence, the first phase of this research has as its main objective, to identify the changes necessary (within the specified scopes) to facilitate the restructuring of the functions of the FLC and the DGLM in providing a much enhanced service towards improvement in Land Administration.

IV. METHODOLOGY

The proposed research is conducted by collecting data from the respective legislations, administration procedures practiced in the department, information management available in the department and interviews by senior administrators in the department to establish the existing scenario of the functions and structure of the two positions.

The first stage of the investigation involves understanding the legal framework of the FLC and the DGLM through the respective legislations, cabinet decisions and discussions papers of various Malaysian Director of Lands Meetings. This information is supported by investigating the administrative procedures and the human capital aspects to determine the relevancies of the functions that is provided by the department in line with the legal boundaries of these two positions. And finally, interviews will be conducted on senior administrative officials within the department to understand the positions of the department and the enhancement needed for the betterment of the department. Based on these preliminary data a initial report and analyses will be provided to the management of DGLM to propose for an amendments to Act 349 or an institutional restructure of DGLM.

V. DISCUSSION

Analysis of the available data has lead to the findings that the need to separate the positions of the Federal Lands Commissioner and the Director of Lands and Mines to enhance the delivery of federal land administration, providing improved land administration procedures to the State Land Administration and creating a sustainable experts in land administration

A. Current Structure Of FLC And DGLM

Since the last restructuring exercise in 2005 the department is headed by a DGLM who acts as the FLC. He is assisted by two deputies DGLM; one deputy oversees the legislation and management enhancement of land administration and the other acts the Deputy FLC and oversees the administration of Federal Lands and the administration and finance of the Department. The duties of the two positions are Cleary separated among the two deputies DGLM:

a. **Duties of the DGLM are carried out by these divisions under the Management Development and Legislation Sector :**

1. Policies and Consultation Division;
2. Standards and Inspectorate Division;
3. Strata and Stratum Division;
4. Management and Legislation Division;
5. ICT Management Division;
6. Special Task Force;

b. **Duties of the FLC are carried out by these divisions under the Coordination and Operational Sector :**

- (i) Federal Land Division;
- (ii) Enforcement and Federal Land Revenue Division;
- (iii) Land Acquisition Division;

c. **These duties are closely monitored by the DGLM's office:**

- (i) Small Estate Distribution Division;
- (ii) Administration and Finance Division;
- (iii) State Department of DGLM (14 states)
- (iv) Legal Unit;
- (v) Integrity Unit.

The functions of the divisions that manifest the position of DGLM provides services to enhance land administrative procedures and legislative amendments for the implementation of the National Land Code 1965 in Peninsular Malaysia. These are in line with the functions of the DGLM in accordance to Section 8 of the NLC 1965.

The functions of the divisions that manifest the position of FLC provides services in procurement and management of Federal Land that will assist in development stipulated in each Malaysian Plan. Besides that the generation of federal revenue by leasing out undeveloped federal land and issuance of deep sea sand permits is managed by these sections.

The general public has the understanding that DGLM must put in effort in developing land administration. There are many reforms and suggestions developed by DGLM to improve but the legislation does not support DGLM in implementing this idea. The functions of the DGLM is limited based on the descriptions of it's function in section 8 of the NLC :

“8. General Powers of Director General

(1) The Director General may –

(a) consult and correspond with any State Director;

(b) require any State Director to furnish him with such returns, report and other information as he may require relating to land administration with the State;

(c) from time to time convene meetings of the State Directors for the purpose of consultation concerning the administration of this Act;

(d) with the approval of the State Director, enter within and inspect the records of any Land Registry or Land Office in any State;

(e) with the concurrence of the State Director, issue such circulars relating to the administration of this Act as may be considered desirable.

(2) The Director General shall, in the exercise of the functions conferred on him by or under this Act, act in accordance with any directions given to him by the Minister”

The NLC 1965 provides limited powers to the DGLM in enhancing land administration. Most of the enhancements that are suggested cannot be legally applied to the States without the prior approval of the State Directors. These inabilities provide lesser room for development of experts in land administration and the rise of segregated knowledge of land administration. In a worst-case scenario State Directors might withhold information or be reluctant to give cooperation to the DGLM and this will be bad for land administration and the DGLM cannot in accordance of the law seek punitive action towards the State.

The archaic procedures of federal land management are still maintained up to this very generation. Much of the implementation of services is governed by cabinet decisions or political pressure. The idea of FLC holding lands for the Federal Government is just a practice and belief, but this is not stipulated clearly in Act 349. As mentioned before this, Act 349 was a transitional legislation to vest lands which were held by the Chief Secretary of the British Empire in Malaya to the Malayan Government. Section 4 of Act 349 clearly states the power of the FLC :

“Powers of Corporation

4. The Corporation may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal

with, any movable or immovable property vested in the Corporation upon such terms as to the Corporation seems fit.”

This provides a loophole in the law where a major question arises, where is the power of the Cabinet or the Minister in dictating the power of the FLC? Does the FLC only holds land for the Federal Government that was vested to it upon 1957 belonging to the Chief Secretary?

The current operational functions of the DGLM and FLC lack in the area of human capital building, procedural enhancement and inculcating information technology systems in land administration. The introduction of the Sixteen Schedule in the NLC provides the legislative platform for the introduction of electronic land administration but the push and the awareness of the usage of this opportunity is not exploited by DGLM. The introduction of the Federal Land Management System is a standalone system practiced identifying Federal Land that is held in the form of titles or reserves. Added information of applications is available, but it lacks integrated information such as lands that are leased out or encroached by squatters or information of future development. With the lack of legal support and the availability of experts the urge to change is rather slow.

Hence the need for a total overhaul of the legal platform and the administrative structure that singles our human capital, business procedures reengineering that looks into the core business of the department and finally the development of human capital is the answer towards the future existence of these positions. And it is also suggested that both these positions are separated to develop a more sophisticated administration that will shine a new ray of light towards federal land management and land management as a whole.

B. Proposed Federal Land Commissioner’s Office

From initial observation, it is suggested that the position of the Federal Land Commissioner be separated from the Director General of Lands and Mines. The position of FLC will be transferred from the Ministry of Natural Resources and Environment (NRE) to the Prime Minister’s Department. To provide more power to the position, it will be elevated to be a central agency in kind of the Economic Planning Unit (EPU), Implementation Coordinating Unit (ICU) and the MAMPU. The office of the FLC will be the sole advisor to the Federal Government in the aspect of Federal Land management and gaining revenue from it. This will transfer the current practice of land procurement for Malaysian Plan Projects from the Ministries. The individual Ministries will only have the discretionary power and financial ability to develop their proposed project on lands that will be procured by the FLC. This is to avoid unnecessary

spending and to reduce the number of undeveloped lands held by the Federal Government.

The FLC will be appointed from any public officer by His Majesty the Yang di-Pertuan Agong. But amendments will be done in the law to stipulate the criteria of a FLC. The most common criteria that the officer must have are has such; served in the land administration, has a good knowledge in legislation, planning and survey. These criteria are foundations for providing a leader that understands his/her position and is able to make good decisions and advice the Government and Ministries on land matters.

The suggested functions that the FLC will oversee are as such:

- i. maintaining the records of titles and reserves of the Federal Government;
- ii. managing and maintaining a complete information of land (includes planning, market expectation and survey) for the purpose of Malaysian Plan projects development;
- iii. Exercise procurement of land for Malaysia Plan projects through application of state land, acquisition and purchase of land;
- iv. Take over the duties of the Economic Planning Units on the management and deciding on privatization and leasing of federal land for development;
- v. Managing short term leases on Federal Land to generate revenue on abundant Federal Land;
- vi. Having legal power to carry out enforcement actions on encroachment of Federal Land;
- vii. Having an enhanced and effective revenue collection system;
- viii. Provide consultancies and advices to the Federal Government on aspects of land management, application, planning and legal aspect;
- ix. Provide training and develop land consultants through a structured module in Federal Land Management; and
- x. Creating and maintaining an independent electronic database that provides the platform of managing all the functions mentioned above through paperless management.

The function of the FLC will be monitored by a board called the Federal Land Board that will be appointed by His Majesty the Yang di-Pertuan Agong.

The board will be headed by the Prime Minister himself and members of the board will comprise of the Minister of Finance, public officers from the Treasury, land surveyors and legislators. The board will consist of not more than 10 members. This board will act as a check and balance on the duties of the FLC because the funds of procuring the lands are obtained through public funds. The board will provide policy directions to the FLC in matters as such:

- i. Management of funds or revenue generated by sales of Federal Lands for privatization projects;
- ii. Future investment of funds and revenue of Federal Lands;
- iii. Providing advice to the Cabinet on Federal Land Management;
- iv. Approval of the Annual Report of the Federal Land Commissioner to be tabled at the Parliament.

With a much-focused description of duties proposed the management weakness and the drawbacks the FLC has been loomed will be overcome. The emphasis of having a dynamic leader with an accurate and confident database managed by highly trained officials, the administration of Federal Lands will be transformed into an important revenue generating entity.

C. Proposed Office of Director General of Lands and Mines

With the separation of the position of the FLC and the DGLM, the position of the DGLM has no legal standing under NLC 1965. An essential amendment to the NLC has to be made where the position of the DGLM will be appointed by His Majesty the Yang di-Pertuan Agong. With this legal appointment, the functions of the DGLM in section 8 of the NLC can be expanded to provide the ability of the DGLM to make changes or enhance the service delivery of land administration has whole under the scope of procedural enhancement and human capital development to achieve a more professional land administration. The position of the DGLM Office might be remained under the portfolio of NRE as it is currently stands or it may be repositioned to other appropriate Ministries.

The new proposed function of the DGLM will be an addition to the current functions stipulated in section 8 of the NLC. The addition will be as such:

- i. Legislative review and amendments of all land related legislation and procedures except the Federal Land Commissioners Act and State Land Rules;
- ii. Reengineer the procedures in land administration to provide an enhanced service delivery;
- iii. To create and control an electronic land administration system to implement the legislative and procedural changes suggested;

- iv. Provide training and accreditation to all land administrators and land administration staff in line of building a sustainable land administration expertise;
- v. Management of Small Estate Distribution applications and disputes;
- vi. Advices the Federal Government on land administration

In development of legislation and procedures of land administration, DGLM will act has a think tank in providing tools for higher education institutes in performing research with the assistants of land administrator and DGLM staffs. Research journals and new applications will be implemented in the state administration with legal effect with amendments of the NLC in the scope of the functions of the DGLM in improvement of land administration service delivery. Providing policies on land administration through research will provide more complete results.

DGLM will be the leading agency in professing the use of an electronic based system in registration of titles with integrated information sharing that will link cadastral data, identity information, court orders, local authority development plans and valuation detail. Besides that, DGLM will assist in enhancing the security aspects of the data in the register of titles with the assistance of research done by comparing international standards.

Once the legislation and tools are in place the next aspect of providing a world class land administration is human capital. DGLM will absorb the National Institute of Land and Survey (INSTUN). Creation of smart partnership with local and international higher education institutes will assist in providing training modules that will mould land administration to be more aware of the needs in land administration. DGLM could work with the Public Works Department to make it compulsory for all public servants that will be posted to the land administration to attend a land administration at the institute for a set time frame. The trainees will be accredited with certificates or diplomas to create the sense of professionalism in land administration.

Through initial observation these are some essential details that can be taken into consideration in transforming DGLM as a leader that will lead the land administration towards glory.

VI. CONCLUSIONS

The focus of the paper is seen as a preliminary observation of the current functions of FLC and DGLM and its contribution towards land administration. The results of this observation will be an input in a research on the National Land Code on the aspect of land administration. This paper provides the preliminary report on the analysis of the current functions of the FLC and the DGLM and what changes that can be made to transform both positions from a passive role to a more active role to push for the betterment of land administration.

REFERENCES

1. Federal Constitution of Malaysia, Article 83-86, 91
2. Federal Land Commissioner Act 1957 (Act 349), Section 3-4;
3. National Land Code 1965 (Act 56 of 1965), Section 6-8,