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**Rules Affecting the Land Development Process in Malaysia – A Review
on Regulation of Environmental Impact Assessment (EIA)**

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Abstract

In the land development process, related written and unwritten rules on land and property may initiate or constrain agents' decision to undertake land development. This paper examines the existence of formal and informal rules within the economic and legal frameworks affecting the land development decisions with special reference to the need for an environmental law and its implication. Using an institutional economics analysis, it shows the way in which these rules affect land development decisions and, thus, restrict or initiate the smooth flow of the land development process. Besides positive effect of controlling, planning and environmental requirements may lengthen the duration of the land development process. The requirements to submit EIA report to authorities for controlling and monitoring purposes may affect the development period and lengthen the land development process. This shows that written and unwritten rules may control as well as encourage the land development process. Therefore, public education on environmental hazards has to be aggressive enough to establish a genuine agenda of sustainable development with a fusion of idealism and pragmatism for the people.

Key words – *Institutional economics analysis, environmental impact assessment, land development process.*

1.0 Introduction

Institutionalists consider rules, policy and organisations and the way these may govern agents' social relations and their attitudes in the society. Institutional economists consider rules and institutions as part of the economic theory embedded within the legal, economic and social systems (Mair and Miller, 1992). This means that institutional economists concern on a collective behaviour of people so that their behaviour and decisions could be modified collectively (Graaskamp, 1992). Institutions range from formal rules within socio-economic, political and legal systems to informal custom and traditions which govern human social interactions (Healey, 1992; North, 1996, Van der Krabben, 1995).

As institutions are conceived as rules which affect human behaviour in the land development process, institutionalists dealt with institutional changes of various organisations, individual behaviour within broader social, political and economic forces. Keogh and D'Arcy (1998) for example, have generally examined the property analysis within the formal and informal rules. The formal institutions are to include written rules such as land policy and regulation which may constrain or facilitate human decisions in the property markets. The unwritten or informal rules, on the other hand, are to include culture, values, traditions and perception which may affect the supply of and demand for land in the property market (Ismail, 2001).

In explaining the institutional environment for property development analysis, D'Arcy and Keogh (1996) assert the existence, importance and implications of broader political, economic, social and legal frameworks which are embedded in various institutions governing the land and property environment. This is indicated in Figure 1.0. Within the legal framework, for example, the broad constitutional laws develop the specific environmental planning and property laws as part of the 'market as institution' (which embedded the formal and informal rules).



Figure 1.0: The institutional environment for property analysis

Source: D’Arcy and Keogh (1996, 17)

The institutional economics theory concentrates on the wider institutional arrangements of the market. The institutional relations within the market will influence decisions made by different actors therein. This means that, in general, apart from the price mechanism, institutional economics considers institutions and their institutional relations among agents which govern the economic activity. The market is seen to comprise a number of different types of institutions. These institutions, or the real life actors in the property

market, are responsible for co-ordinating the economic activity within the complex nature of the land development process (Ball *et. al.*, (1998)). In other words, institutions may operate to facilitate and/or constrain human activities (North, 1996). It is, therefore, the role of institutions or 'rules of the game' which are important in all economic situations (North, 1996). As a result, institutions are both initiating and/or constraining the environmental and land development decisions.

Therefore institutional economics analysis covers the factors affecting the land development decisions extensively by looking at a much richer insight into the formal and informal rules within institutions-agency relations and agents attitudes in the land development process. The theoretical framework of the institutional economics analysis is, therefore, able to address the whole ranges of factors affecting the environmental aspects of the land development process within the dynamics of construction activities in relation to the potential significance distortions by various actors in the process, the policy and organisations of agents and their intermediaries, the flows and forms of finance capital and other internal and external environmental factors to the land development process. Therefore, it could be tacitly contended that the institutional economics analysis generally and indirectly covers the whole range of formal and informal institutions affecting the land development decisions.

2.0 The economic framework - the economy and property environments

The introduction of the New Economic Policy (NEP) of Malaysia in restructuring the economy of the society in 1970s, had a positive effect of improving the property markets when property sector showed signs of recovery. The periods of early 1980s showed an active participation by both overseas and local corporate investors in the property sectors. There was a steady growth in the property market trends in Malaysia from the early 1990s until mid-1997 with a steady economic growth of more than 8.0% per annum. In the late 1997, however, the economic growth had a slower pace of 7.4% due to financial crisis in the far eastern region (Ismail, 2000c). In 1998, the gross domestic product (GDP) indicated a negative rate of growth between 2.8 to 6.8% as shown in Figure 2.0. There

were economic implications to the Malaysian economy and the property market as a whole when the financial crisis occurred. According to Bank Negara Malaysia (1998), the Malaysian Gross Domestic Product was drastically reduced to 6.1% in July 1997. This was the dramatic influence of drop in aggregate demand by about 26.5%. As a result, rate of inflation rose to 5.3% and rate of employment dropped to 3.4%. It was more disastrous when the rate of foreign exchange dropped by 40% and construction sector was downed by 24.5% in 1998. However, due to government stringent effort to improve the economic situation, the GDP grew at about 5 per cent in the year 2001.

As institutional economics analysis refers to the existence, creation and implication of 'the rules of the game' which affect 'players or actors' in the office market, the government has taken steps to improve the economic climate especially the office property market in Kuala Lumpur. More specifically, the government has taken steps to regulate formal measures either financially or fiscally by establishing the National Economic Action Council (MNEAC) in 1999 to propose plans to improve the economy institutionally. Steps taken by MNEAC include the proposal to stabilise the value of ringgit (RM), to reestablish confidence on the market, to stabilise financial market, to strengthen the economic fundamentals, to continue socio-economic and equity agenda and to improve the weakened sectors within the economy. In so doing, MNEAC has taken radical approaches such as to improve credit control on foreign exchange in order to stabilise the ringgit. In addition, the Central Bank has imposed control on foreign capital to restrict the out flow (Ismail, 2000c). Moreover, the Central Bank has injected about RM34 billion to the banking sector to improve the lowest interest rate in 1997. In 1998, the government has established Danaharta, the asset management fund agency to take over non-performing loan from the banking system. At the same time, Danamodal, a capital management fund agency was set up to inject fund to the banking system. Other than these measures, the Corporate Debt Restructuring Committee (CDRC) was set up to restructuring the banking system. In the property market sector, the government has taken steps to improve the property slump by the establishment of the National Property Information Centre (NAPIC) to provide an up-date and accurate property information.

Among other things, the purpose of NAPIC was to ensure that the oversupply in property sector will not be repeated again.

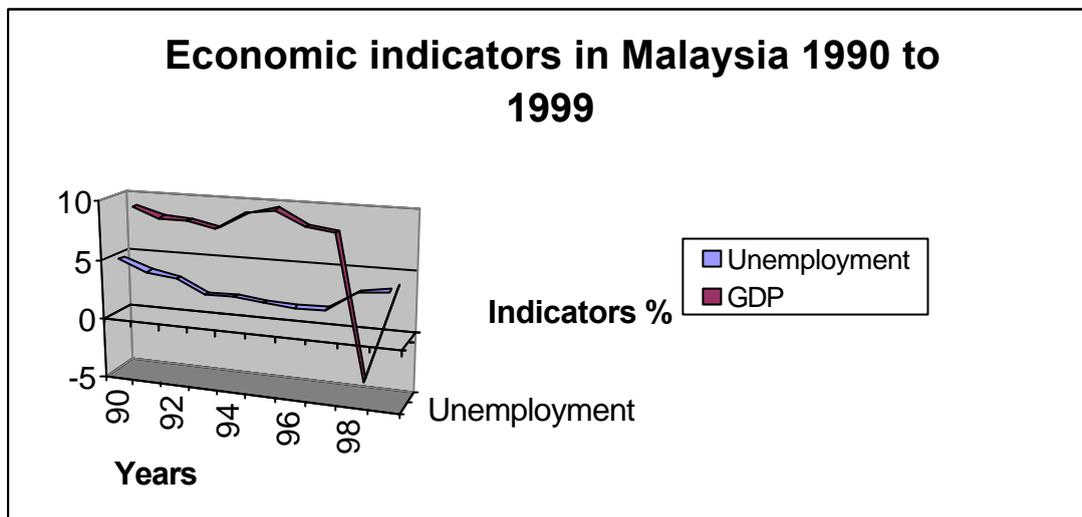


Figure 2.0: Malaysian economic indicators 1990 to 1999

Sources: Property Market Reports (1990-2000)

Therefore, the economic measures such as fiscal and legal exemptions, incentives and restrictions affect land development and property investment decisions. In early 1984, for example, a restriction on foreign landownership was imposed to amend the National Land Code (1965) due to an influx of overseas purchasers in certain urban areas. The restriction was on a certain types of property and it imposed a levy for certain residential property. However, the restrictions were repealed in 1987 during the recession and, then were amended again in 1991 when the economy recovered (Usilappan, 1997a). As a result of the financial crisis since mid-1997, the levy for certain residential properties were lifted again to improve the confidence of foreign and local investors in the property market (Property Market Report, 1998). Similarly, as evidenced from 1991 to mid-1997, the lending regulations have played an important role in pushing up the cost of borrowing for land developers and property borrowers. The aim was to restrict land development activities and to avoid an oversupply of properties in the market.

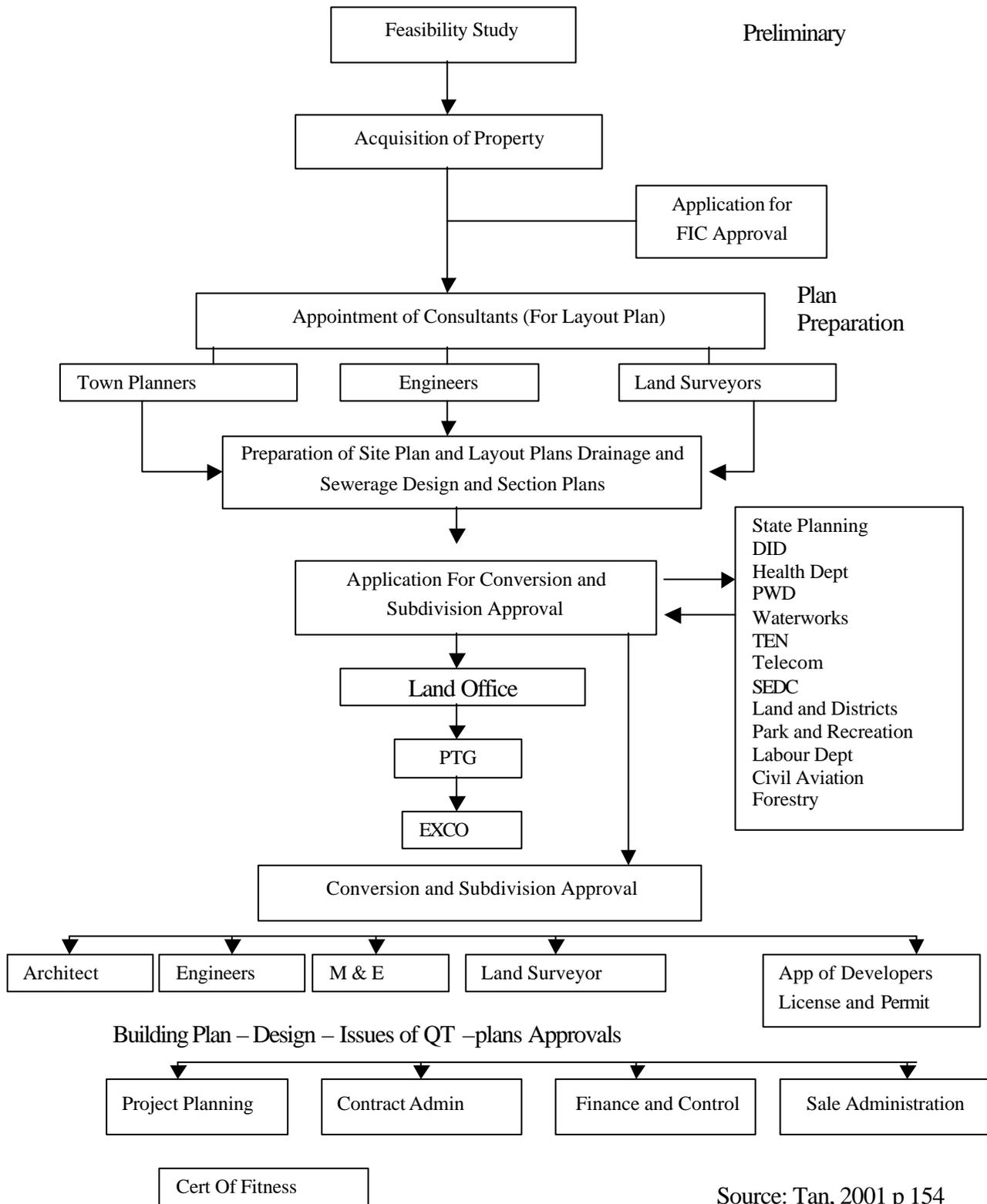
As shown, the control on credit facilities and financial crisis were responsible for the slowing down of the construction activities since mid-1997 (Property Market Report, 1998). The government reviewed the existing financial and legal conditions imposed on land developers and provided incentives to improve the property sector despite economic recession (Property Market Report, 1999). As a result, these measures have indicated positive signs of economic growth and a recovery of property sectors in the year 2000. This shows relationship between economic indicators and land development activities.

3.0 The legal (administrative) institutional framework: land policy - environmental planning and land development

Evers (1984) asserted that the ownership of urban land and the access to business opportunities have become a major issue in South East Asia's pluralistic society. In addition, Singh (1995) noted that there are issues on the control over land use, land market and institutional structure which prevailed in the study of urban land in Malaysia. More importantly, the urban land issues within a pluralistic society in Malaysia seems to have a conflict between the environmental rules and the land development policy. On the one hand, the government promotes land development in the country for a more prosperous and balanced society and, on the other hand, there are certain precautionary environmental rules laid down to protect its hazards. However, we seem to think that economic development must take precedence over environmental concerns (Josie, 2001).

The objective of the economic policy is to eradicate poverty and restructure the wealth. Therefore, the implementation of land policy and environmental planning measures is taken alongside these aims. The effort of the government to emulate industrial countries for the 2020 vision, for example, sought to provide a proportionate ratio of infrastructure, water supplies and sanitation development. At the same time, we had tried to mitigate industrial pollution with the technology available (Josie, 2001). However, to a certain extent, the overall implementation of land policy and environmental planning measures face difficulties due to some distortions associated with political, social and economic

influences which created a complex but not insurmountable environmental issues. Tan (2001) identified rules affecting the land development process as shown in Figure 3.0:



Source: Tan, 2001 p 154

Generally, rules on land development can be seen as a land policy which is a set of rules to guide the efficient use of land (Lichfield, 1980). In Malaysia, land policies are a set of rules in the form of written land laws aimed at solving land related problems as they have arisen (Goh Ban Lee, 1980). As such, environmental policies in Malaysia are mainly in the form of laws to guide and control environmental within the context of land development decisions. Some of the main written land policy and laws to guide the land development activities as derived from the Malaysian Constitution are as follows:

- (i) The canon - National Land Code (1965)
- (ii) Compulsory purchase and compensation - Land Acquisition Act (1960)
- (iii) Planning and related development regulations – Environmental Quality Act 1974

The National Land Code (1965)

The National Land Code (1965) was made effective on 1 January 1966 as the main canon of land law to administer land in Peninsular Malaysia. The main function of the National Land Code (1965) is to provide a practical way of land administration in the country.

There are rules and restrictions imposed by the National Land Code (1965) which control and/or guide the land development in the country. However, these restrictions and guidances are progressively being amended to cater for social, political and economic changes in the country. Since 1991, for example, the National Land Code (1965) has been amended generally to restrict foreigners from buying lands categorised as 'agriculture' and 'building' but not 'industrial' lands with approval of the State Authority (Section 433, Part Thirty Three). This is done through control by the Foreign Investment Committee on new investment: either it must be approved, or allowed with certain conditions such as no renting or resale within three years. As a result, these restrictions control and limit the demand for certain lands to be released to the foreigners.

The National Land Code (1965) is based on the Australian Torrens System which establishes the ownership of an 'indefeasible' title to land and, therefore, legalises all dealings on land (Section 340). Every person owning land will hold the document of title, guaranteed by the government as holding the legal interest in land. The registration makes the search of title at the land registries or land offices easy and simple. In the same manner, the title document of the land and the rights of all interested persons therein are legalised. The registration of land enables the transaction from landowners to land developers for development purposes. In general, without land available for development, no development could take place (Cadman and Topping, 1995).

With reference to the planning requirements for development, the National Land Code (1965) provides guidelines on the procedures for planning applications. For example, Part Nine (Sections 135 to Section 150 of the National Land Code (1965) empowers the control on land subdivisions and partitions of the land, conversion of category of land use and the amalgamation to land offices and land registrars throughout the country. For example, Sections 136 and 147 of the National Land Code (1965) provides conditions for application to be considered for approval such as consent of every person (in case of multiple landownership) or body having interests in the land. In another example, Section 204, Part Twelve, deals with a special procedure to undertake land development through surrender and re-alienation where the restricted lands may be given back to the State Authority and then realienated to the landowners so as to remove the constraints or restriction in interests, wherever possible.

Part Seven of the National Land Code (1965) specifies the conditions and restrictions in interest of alienated land in relation to the category of land use and the procedure to remove the restrictions and conditions. For example, there are restrictions in the interest of the Malay Reserved Lands and Bumiputra lots (for residential properties) which disallow these lands from being transacted to persons other than Malays or Bumiputra persons.

In addition, there are restrictions in land dealings known as encumbrances such as lien, leasing and charging (Part Sixteen of the National Land Code, 1965) which may restrict the supply of land being transferred to the land developer or to lengthen the land development duration taken to remove these constraints. There are, however, cases where these procedures and requirements of development planning and land administration may lengthen the land development process (Singh, 1995). Although the National Land Code (1965) embodied a practical way to administer land for development purposes, it has some implementation and integration problems.

The main difficulty is that the implementation of the National Land Code (1965) is different in each state since they have differing urban land policy measures known as the State Land Rules. Land is a state matter (Article 74 of the Malaysian Constitution) and each state has control over its own land. The power of every State over land includes compulsory purchase (Article 83) and Malay reservation (Article 89) and any matters concerning all dealings in lands. There are also other legislations in the form of administrative circulars and executive committee rulings which determine the rules that govern the use and the development of land in the country. There are cases where the conflict of interests between federal and state authorities has led to unresolved situations over decisions to acquire land for development. To a certain extent, the relationship between federal and state governments may restrict the supply of land for development purposes.

However, for the purpose of ensuring uniformity of law and policy, Article 91 of the Malaysian Constitution establishes the National Land Council chaired by a federal minister with representatives from various states (including Sabah and Sarawak). The main objective of this Council is to formulate a national policy for the promotion, control and utilisation of land throughout the country. As Article 91 stipulate its purpose is to:

‘ formulate from time to time in consultation with the Federal Government, the State Government and the National Land Code a national policy for the promotion and control of the utilisation of land throughout the federation for mining, agriculture, forestry or any other purpose, and for the administration of any laws relating thereto; and the Federal and States Governments shall follow the policy so formulated’.

(Article 91, Malaysian Constitution)

To streamline the national development of the country, Article 92 of the Malaysian Constitution gives the parliament additional powers in respect of national policies for development, land acquisition, improvement or conservation of the natural resources and the exploitation of such resources or the increase of means of employment in the area. As a result, this power was used to initiate and/or control the land development in various states through the empowerment of various government land development agencies and corporations such as the establishment of the Urban Development Authority (UDA) to initiate and undertake land development in the country. However, there are cases where this authority undertook to control and constrain the decisions of various agents and agencies, particularly in the private land development sectors in order to uphold the interests of the community at large such as to preserve the environment and to fulfill the national economic and development policies.

Compulsory land acquisition laws

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

The government intervention over land development is directly exercised under the power of land acquisition as stipulated under the Land Acquisition Act (1960), and

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

However, in general, there are cumbersome frameworks to acquire land for public purposes. At present, under Schedule 2 in the Land Acquisition Act (1960), compensation paid to the affected landowner of the Malay Reservation Land should ignore the Malay Reservation status. Therefore, the affected landowners of Malay Reservation Land should receive the open market value of non-Malay Reservation Lands. The main reason for this equivalent amount of compensation is to consider the true nature of the indigenous land status before and after acquisition. However, when the landowners of Malay Reservation Land are not satisfied with the compensation paid, they may appeal and prolong the acquisition process. In extreme cases, landowners' resistance may adversely affect the decision to go ahead with the project. In this case, valuation and landownership constraints are said to exist (Adams *et. al.*, 1988, Adams, 1994).

In general, the compulsory acquisition of Malay Reservation Lands for public purposes is undertaken for the benefit of the Malays. This is because the Malay Reservation Land status is not transferable to non-Malays in any circumstances, neither before nor after being developed. In other words, there is a limited market for the Malay Reservation Lands. When the government acquires the land for development or the Malay developers buy the land, they are reluctant to pay a high price or compensation for these lands because of the limited market and the lack of financial resources of the Malay buyers. Since the affected landowners are still asking for high prices of their lands, the government or the private developers may no longer be interested in the land dealings. As a result, the land potential for development remains undeveloped.

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

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

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

Therefore, the valuation for compensation cannot be based on the special provision which disregards the restricted use of the Malay Reservation Lands (Fernandez, 1997). This new provision is to stimulate further the development of under-utilised Malay Reservation Land such as in Kampong Baru through government intervention in land acquisition. The

reasons, for this amendment was that, such lands could not be acquired because the landowners had insisted on a higher compensation comparable to lands in the Golden Triangle Area of Kuala Lumpur (Ismail, 1999, 2000a, 2000b).

Planning laws and environmental measures

The Town and Country Planning Act (1976) empowers the local planning authority to consider planning applications for the purpose of land development. In particular, Section 19 of the Act stipulates, 'no person shall commence, undertake, or carry out any development unless planning permission in respect of the development has been granted'. In applying planning permission for development, delay may lengthen the land development process and causes higher costs of development.

In addition, the Local Government Act (1976) was enacted to allow the local authority to control and guide land development. Under this Act, Section 18 stipulates that land development may be controlled and initiated through the formulation and identification of a 'structure plan' and a 'local plan'. The structure plans are the general proposals of the local planning authority for development and the use of the land and are normally prepared by the Federal Town and Country Planning Department and have to be adopted by the various States. However, often changes are made by the States creating uncertainties in planning, and giving rise to cause for concern to land developers (Usilappan, 1994). He asserts further that a flexible structure plan simplifies policies, setting out main strategies and identifying sufficiently the extent of development to bring a better regulated development process. This could prevent unhealthy speculation since the planning approval process may take up to three or four years. Some unusual and more comprehensive land development projects may take up to seven years to be approved (Singh, 1995). The local plan can take the form of a zoning, density or layout plan of varying details indicating exactly what a landowner can or cannot do with his land. As Section 18 of the Act stipulates that any development shall be in accordance with the local plan.

There is also the Street, Drainage and Building Act (1974) which spells out in detail the powers of control and the minimum standard requirements in all aspects of land development prior to the approval of the planning permission by the local planning authority. In Kuala Lumpur, there are, in addition, land development regulations imposed by the Federal Territory of Kuala Lumpur City Hall, such as the Federal Territory of Kuala Lumpur (Planning) Act 1982, the Uniform Building By-laws (Federal Territory of Kuala Lumpur) 1985 and the Federal Territory of Kuala Lumpur Land Rules 1995 (amended), which govern the planning and development control within the jurisdiction of the Kuala Lumpur City Hall.

In terms of environmental aspects of the land development process, the Environmental Quality Act (1974) (Act 127) (amendment 1985) spells out rules in relations to the requirements that have to be fulfilled by land developers prior to the development of land. This Act of 127, has, to a certain extent, played a very important role in carefully controlling and facilitating the importance of environmental protection from being destroyed in the land development process.

In Malaysia, an EIA report is required under Section 34A of the Environmental Quality Act (1974) (amendment 1985). It has been enforced since 1986. Numerous activities subject to EIA is stipulated in the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 as being enforced on 1 April 1988. There are generally three major steps in carrying out EIA in Malaysia:

- a) Preliminary assessment stage – initial assessment of impact
- b) A detailed assessment – the review by technical committee
- c) Final review by Department of Environment

According to Tan (2001), the EIA procedure in Malaysia is designed to follow the integrated project planning concept whereby this concept is to fully integrate the environment dimension in the project planning or designing process. The timing and submission of an EIA to the authority is therefore vital. There are problems related to the

implementation and execution of EIA requirements mainly the cost to the land developers. Furthermore, there are weaknesses in the EIA report including poor description and inadequate statements of need, lack of baseline data on environment quality, poor prediction of impacts, insufficient alternatives of mitigation and control, failure to propose monitoring programme and inconsistencies in information reported (Tan, 2001). However, one of the major weaknesses of the EIA requirement is that it is required for most land development projects of 50 hectares or more but projects less than this size can also produce environmental hazards (Tan, 2001). It is therefore, the Constitution should be explicit about the basic right to a proper environment.

Even though ‘...we have the technology to mitigate pollution, greed, corruption and lack of political will are frustrating the implementation and enforcement of legislation that will give us clean air, water and abundance of flora and fauna that generations to come will appreciate and enjoy’ (Josie, 2001). It seems that the environmental problem lies on the key issue of better management of our resources to embrace ecological and environmental concerns. The other environmental issues are poverty, political turmoil, logging, burning by plantations, land rights conflicts, air and water pollution (Josie, 2001).

Although we have The Kuala Lumpur Accord on Environment and Development 1990, the 1995 Asean Co-operation Plan on Transboundary Pollution and the Regional Haze Plan 1997, it seems that these are not properly implemented. Beside these agreements, haze and forest fires are annual occurrences, there is no blueprint to cope with the problem and furthermore, the prolonged political and economic crises had worsen the regional environment (Josie, 2001).

As a result of the environmental problems, it has an effect of creating uncertainties about long term property investment and developments, hence, establishing a variety of inefficiency and difficulties. The cost of foregoing opportunities, may lead to inefficiency and a reduction in productivity. Landholders and land developers are, for example, restricted from making decisions about long term land and property investment and

development. These environmental issues, therefore, can be seen as a set of formal rules which may restrict the smooth flow of the land development process.

4.0 Conclusion

There are, therefore, underlying formal and informal rules within the socio-economic and legal frameworks which guide and restrict the land development process. These are restrictions on the use of land rights, valuation principles for compensation and regulations on environmental planning and development which distort the land development process. These are formal or written rules which were established and enforced to guide, control and drive the land development process

This paper has shown that measures and policies on the economic and construction industry, enforcement of rules and regulations on environmental planning and land development and policies on land rights have an effect on the smooth flow of the land development process. As a conclusion, using an institutional economic perspective, formal and informal rules within socio-economic, political and administrative frameworks need to be amended from time to time when necessary due to the dynamics of institutional changes affecting the land development decisions.

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