

HALA TUJU BAHARU DALAM PENYEDIAAN KERTAS SIASATAN DI BAWAH KANUN TANAH NEGARA 1965

Oleh

MOHD HELMI BIN MAT ZIN

Ketua Penolong Pengarah (Perundangan)

SUK Kelantan



► Tajuk asal :

“The Role of Criminal Investigation
Under Malaysian Land Law”

► Dibentangkan di Persidangan
Antarabangsa Mengenai Undang-
Undang dan Masyarakat Kali Ke-6 di
Universitas Muhammadiyah,
Jogjakarta pada 4-7 April 2017

ABSTRACT

- ▶ Investigation is a pre-requisite process to the prosecution proceedings. Process of preparation of Investigation Paper (IP) is new to Malaysian Land Administration
- ▶ The need of IP is vital once the National Land Code (amendment) 2008 comes into force in January, 2009.
- ▶ Prior to amendment, Land Administrator can simply compound the offender under the code but after that, by substituting subsection of 429A and 429B, the Land Administrator is required to get written consent from Public Prosecutor before compounding or prosecuting the offender

Introduction

- ▶ ‘Criminal Offence’ is a very rare term in land administration
- ▶ Basically, there are twenty six (26) provisions under National Land Code 1965 (‘NLC’) is constituted as criminal offences or quasi criminal offences
- ▶ State Director or Land Administrator will institute the prosecution action under the power given by section 16 of National Land Code 1965 with the consent from Public Prosecutor under section 429A and 429B of the Code when a person committed these criminal offences

Criminal Offences Under the National Land Code 1965

- ▶ seven seizable offences where Land Administrator or any authorized person can arrest without warrant
- ▶ The most popular offences under Malaysian Land Law are :
 - 1) illegal occupation of State Land; and
 - 2) unlawful extraction or removal of rock material
- ▶ Since the government are very concerned to this issue, parliament amended the National Land Code 1965 by increasing the maximum punishment for both offenses effectively from 1st January 2017

Cont...

- ▶ Illegal occupation of State Land and illegal extraction of rock material affect to the income and revenue of the State.
- ▶ significant difference to the collection of royalty and fine after empowering enforcement process compared to before

Table 1: Collection of royalty and fine under section 426 of NLC from 2012-2017

YEAR	2014	2015	2016	2017 (Feb)
Royalty (RM)	4,468,607.53	6,906,499.02	6,649,923.75	1,708,268.01
Fine (RM)	0.00	112,750.00	723,830.00	683,564.00

Cont...

- ▶ Significant increase begins after PTG formed an **Investigation Division** in 2015
- ▶ Low collection of royalty indicates that lacking in the investigation and prosecution process lead to the failure of the State to deter the infringement of the law by the offender
- ▶ Thus, it is very important to have an efficient process of investigating, detecting and gathering of criminal evidence to achieve a successful prosecution

THE ROLE OF INVESTIGATION AND THE PROCESS

- ▶ Investigation process is a pre-requisite to the prosecution proceeding
- ▶ Prior to the amendment of National Land Code 1965 in year 2009 through A1333, Land Administrator can simply offer to compound the suspect according to section 429B of the Code
- ▶ After amendment, A1333 substituted the whole section 429A and Section 429B of National Land Code 1965 with new provision, requiring the consent of Public Prosecutor before compounding or prosecuting the offender

Conti...

- ▶ The requirement under these sections caused Land Administrator failed even to offer compound
- ▶ This situation happened when the consent from Public Prosecutor only will be granted if the Investigation Paper ('IP') being produced to him
- ▶ It makes the IP is a pillar to the success of enforcement under the Code

The investigation procedure under CPC

- ▶ The Code also provides a guideline for proper investigation and it starts when the officer in charge receives a report from the complainant
- ▶ the Code also provides specific powers to the court to issue a search warrant, authorizing a search prior to the seizure process

The investigation procedure under the NLC

- ▶ Power of Investigation is mentioned in Part thirty one of NLC
- ▶ Section 421AA authorized State Director and Land Administrator to conduct investigation for crimes under the Code
- ▶ Any authorized person who is appointed as Investigating Officer is advisable to be gazetted as Land Administrator for special purpose to carry out the investigation process

Conti...

- ▶ The procedure of investigation in the NLC 1965 is mentioned in section 421AB (power to require attendance of witness) and Section 421AC (power to examine the witness) which is *in pari material* with section 111 and 112 of CPC
- ▶ Nevertheless the investigating officer ('IO') relies greatly on the CPC due to its comprehensiveness
- ▶ For instance, the requirement of recording the process of investigation in Investigation Diary ('ID') under Section 119 of the CPC must be thoroughly observed and strictly conducted using the prescribed forms and procedures

Conti...

- ▶ Its same goes to the procedure where the IO cannot complete the investigation to the arrested person within twenty four (24) hours fixed by section 28 of CPC, the IO may produce the arrested person under section 117 of CPC before a magistrate to get authorization to further detain the arrested person in his custody

Conti....

- ▶ Further, the CPC also provides specific powers to the court to issue a search warrant and warrant to compel a witness or suspect to give evidence in the course of investigation

Steps in Investigation

- ▶ The duty of Investigating Officer begins once he receives Police Report (First Information Report) regarding to the commission of the crime under the NLC
- ▶ IO will first visit the place of the incident to gather information from the scene and start to record the cautioned statement
- ▶ All the statements also will be recorded and reduced into writing and signed by the person making it

Cont...

- ▶ The IO will continue to investigate until the elements of offence have been fulfilled
- ▶ The IO will gather all information to be analyzed to trace the real culprit because in most of the incident, the arrested person only an agent to the main offender
- ▶ The investigator must also ensure that there is no break in the chain of evidence especially if it involved the sample of exhibits to be analysed by laboratory department

THE ISSUES AND CHALLENGES OF INVESTIGATION PROCESS

- ▶ Criminal Investigation by Land Administrator for offences under National Land Code 1965 is very new and not much exercised in this country
- ▶ Therefore, it did not get much attention from the Management to enhance and to strengthen this area
- ▶ The main problem with the investigation process is lack of expertise in this area
- ▶ The officer especially Settlement Officer never being exposed to the process of investigating criminal offences

Conti....

- ▶ The Settlement Officer is more synonym with land survey and plan
- ▶ There is no manual provided by Department of Director General of Land and Mines Malaysia (JKPTG) pertaining to the process of completing Investigation Paper

Conti...

- ▶ Another problem which leads to the failure to prepare Investigation Paper is appointment of IO
- ▶ Most of Land Office including Office of State Director did not appoint any officer to be an IO to handle the case.
- ▶ The Public Prosecutor unable to give consent either to compound or to prosecute the suspect if there is no IP prepared for him

Cont...

- The statistic for the consent from Public Prosecutor after the amendment of National Land Code 1965 can be seen in the schedule below:

Table 2: Number of Consent from Public Prosecutor

YEAR	2009	2010	2011	2012	2013	2014	2015	2016	2017
Consent	0	0	0	0	0	0	28	37	6

Cont...

- ▶ Lacks of facilities also contribute to the problem in completing investigation process
- ▶ The most crucial is the availability of lock-up

CONCLUSION

- ▶ Investigation is the most important aspect to ensure the success of enforcement process under National Land Code 1965
- ▶ Without investigation and prosecution, the offenders cannot be convicted for the offences that was committed by them
- ▶ The punishment is important to deter the offender from repeating the same offences

Conti...

- ▶ the government should give attention to enhance the procedure of criminal investigation
- ▶ The government also **should consider** to establish separate department for **Investigation Unit** in Office of State Director to make sure the officer appointed as IO can concentrate to their core business and to develop the expertise in this area

Conti...

- ▶ For the Investigating Officer, they should equip themselves with skills and legal knowledge because any negligence on the part of the investigator will result the failure in the prosecution