THE MALAYSIAN LAND TAXATION SYSTEM: A
CHRONOLOGICAL REVIEW OF THE TORRENS
SYSTEM FROM THE ISLAMIC PERSPECTIVE

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Abstract

This research shall deliberate on the chronological process of the formulation of the Malaysian land taxation system. The Malaysian land tax system underwent evolutionary and assimilation processes from the Customary Land Taxation system to the application of the Torrens System embedded in the National Land Code. This research would also critically evaluate key Torrens System principles such as the “Mirror Principle” and the “Curtain Principle”. Several issues would be highlighted in the research with regard to the said principles. Among the issues that would be further discussed revolve around the registration that may not be the solution to the problem, the isolation of property to a particular group of people only, the fact that the Torrens System itself is in contradiction with the theory of Abu Ubayd on “al-Kharaj bi al-Doman” and tax will only be levied on productive land. Finally, the study proposes the augmentation of the present system and the need to apply the ideal Islamic Policy in the implementation of the Malaysian Land Taxation System.

Key Words: Malaysian Land Tax, Torrens System
1. Introduction

The history of land tax or quit rent in the Malay States can be traced back to a practice based on customary laws and Islamic influence which also became basis for the formulation of the legal system in the Malay States. After the arrival of the British in the Malay States, elements of the Torrens System were gradually introduced into the local land laws. The Torrens System was introduced by an Australian Sir Robert Torrens (Saudah Sulaiman, 1997) (Salleh Buang, undated). The system was first introduced in Australia in 1864. It is an exclusive system with a fixed scheme where equity (Saudah Sulaiman, 1997) is excluded (Judith Sihombing, 1977). It was introduced by the British to increase the efficiency and effectiveness of land administration. The Torrens system operates on the principle of "title by registration" and it is an indefeasible title to the estate or interest. Details of the owner and land such as size, location, survey plan and boundaries however are stated (Judith Sihombing, 1977).

2. The Formulation of the Malaysian Land Taxation System: A Chronological Account

The evolution of the Malaysian Land Taxation System underwent four phases of development. The first phase was a stage where local customs and features of Islamic influence can be traced in the law on administration of land. This was during the pre-independence (1523-1605) period of the Malay States. The second phase (1824-1948) saw the gradual integration of the Torrens system into the land laws of the Malay States. The National Land Code was formulated during the third stage (1948-1963) in 1965; during the post independence era. Finally the fourth phase is marked by efforts to enforce the National Land Code 1965 and this phase runs right up to today. Chronological details of phase 1 can be seen in table 1 below:

Table 1: Reference to customary laws (Adat) and Islamic influence in the Malay States prior to independence (Phase 1: 1523-1605)

<table>
<thead>
<tr>
<th>The Malay States Before Independence (1523-1605)</th>
<th>Use of Adat and the Islamic influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temenggung Adat in:</td>
<td>1) A slight influence from Hinduism but later the Islamic influence became more prominent in the 14th century. For instance the law on inheritance was taken from Islam. (Faraid)</td>
</tr>
<tr>
<td>Perlis, Kedah, Perak, Selangor, Johor, Terengganu, Kelantan, certain districts in Negeri Sembilan and Melaka.</td>
<td>2) Elements of Islamic law was found in the land tenure laws in:</td>
</tr>
<tr>
<td></td>
<td>a) Melaka (Malacca Digest 1523)</td>
</tr>
<tr>
<td></td>
<td>b) Laws of Pahang (Pahang Digest 1650)</td>
</tr>
</tbody>
</table>
c) Laws of Kedah (Kedah Digest 1650)  
d) Laws of Johor (Johor Digest 1789)  
e) The Perak Code

3) Matters regarding the clearing of land. A person may do so on condition that he is a Muslim and the said land is not owned by anybody else.  
a) The 99 Laws of Perak (Undang-Undang 99 Perak (1765))

4) The concept of ownership in Islam:  
‘Ihya’ concept (clearing and putting land to use):  
- According to customary law, up to 3 years (ownership is maintained if the land is left idle), after 3 years it belongs to the Ruler or the State Head to be given to another person who wants to develop the land.

5) Bumiputeras are allowed to prospect and open up new areas to be developed for a certain period of time or indefinitely on provision that 1/10 of proceeds be given to the state.  
a) Laws of Melaka (Risalat Hukum Kanun 1523)  
b) Pahang Digest (Iktisar Pahang 1596)  
c) Kedah Digest (Iktisar Kedah 1605)  
d) Johor Digest (Iktisar Johor)  
e) The 99 Laws of Perak

| Adat Pepatih  
Negeri Sembilan: District of Rembau,  
Kuala Pilah, Tampin, Jelebu and Seremban.  
Melaka: Naning dan Alor Gajah. | The application of adat Pepatih is based on:  
a) Actual property, owned by a tribe and handed from mother to daughters as trustees.  
b) A collective inheritance system where beneficiaries do not actually own a particular property but merely allowed to reap from it. |

Source: Adapted from Mohd Ridzwan Awang (1987) and Salleh Buang (2007).

Based on Table 1, it is evident that the pre-independence Malay states had already practiced the Adat Temenggung and Adat Pepatih. Five elements can be identified in Adat Temenggung as reflecting the Islamic influence. Firstly, its law of inheritance which is termed fara’id in Islam (Judith Sihombing, 1977) (Mohd. Din Ali, 1965). Secondly, there is an Islamic law provision in the law governing land tenure in the Malacca Digest 1523, Pahang Digest 1650, Kedah Digest 1650, Johor Digest 1789 and the Perak Code. Thirdly, on clearing of land in Adat Temenggong which says that one may clear land if he/she is a Muslim and the said land is not already owned by someone else and this was stated in The 99 Laws of Perak (1765) (Mohd. Ridzuan Awang, 1987). Fourthly, the concept of ownership in Islam (Ihya-opening up of land and developing it). The Customary Law states that a piece of idle land may remain in one’s ownership for up to three years only; after which the a Ruler or Head has the right to award the land to someone else. Fifthly, bumiputeras
(indigenous people) may lay claim on any piece of idle land on condition that 1/10 proceeds be given to the state. This is documented in the Laws of Melaka (Risalat Hukum Kanun 1523), Pahang Digest 1596, Kedah Digest 1605, Johor Digest and the 99 Laws of Perak (Mohd. Ridzuan Awang, 1987).

Adat Pepatih on the other hand, is not influenced by Islamic Law (Shariah) like in the matters regarding inheritance and division of property where itdictates that land is passed on from mother to daughter. However, with the introduction of Islam, in the 14 century (Mohd. Ridzuan Awang, 1987) (Mohd. Din Ali, 1965), a woman who inherits land is considered a trustee and the collective inheritance concept does not make her the absolute owner but a trustee or guardian who may put the land to use for her benefit; much like the idea of humans as vicegerents in this world (Mohd. Ridzuan Awang, 1987).

Table 2: The Introduction of the Torrens System in the Malay States Pre-Independence (Phase 2: 1824-1948)

<table>
<thead>
<tr>
<th>The Malay States Pre-Independence (1824-1948)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The laws and the corresponding states</td>
</tr>
<tr>
<td>Federated Malay States (FMS)</td>
</tr>
<tr>
<td>(Perak, Selangor, Pahang, Negeri Sembilan)</td>
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<tr>
<td></td>
</tr>
<tr>
<td>Unfederated Malay States (UMS)</td>
</tr>
<tr>
<td>(Johor, Kedah, Kelantan, Perlis, Terengganu)</td>
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<tr>
<td>Straits Settlement (Melaka, Pulau Pinang, Singapore)</td>
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<td></td>
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</tbody>
</table>

Mohd. Ridzuan Awang, (1987) further explain that, during the second phase, the Torrens System began to be incorporated into the General Land Regulations. This happened after the British had formally taken over administration of the four Federated Malay States: Perak (1877), Selangor (1891), Pahang (1889) and Negeri Sembilan (1887). In 1877 the British Resident introduced the Perak General Land Regulations in Perak. These regulations were later revised in 1879 to accommodate the Torrens System. The regulation states that all land belongs to the Ruler. In 1891 the Selangor authorities formulated their own land laws modelled after the Torrens System. In 1898 however these laws were updated. The state of Pahang introduced the Torrens System in 1889. A year later it was amended and subsequently was replaced by Enactment 28 and 29 in 1897. Negeri Sembilan however formulated Enactment 23 in 1897 and 1898.

On the other hand, land administration at the Unfederated Malay States at the start of the British administration was based on Adat and in some aspects Siamese law was enforced. Later on, the British introduced the British land laws and the Torrens system separately. From then onwards, the land laws at both the Federated and Unfederated Malay states were based on the Torrens System. For instance Johor formulated enactment no. 1, which was revised in 1937, Kedah formulated the 1913 Kedah Land Enactment which was revised in 1934 (no. 56), Kelantan formulated the Klantan Land Enactment No. 26 in 1938 and Perlis its Land Enactment No. 11 in 1935. Terengganu introduced their Land Enactment No. 3 in 1936.

Together with all the land enactments came the need for a registrar of land in the Unfederated Malay States. This was as stipulated in the laws concerning land in Perak, Selangor, Pahang and Negeri Sembilan; albeit with minor adjustments here and there to suit the local scenario. All five enactments in these states remained in force until they were replaced by the 1965 Land Code which standardised all laws concerning the administration of land throughout Peninsular Malaysia with the Torrens System.
Table 3: Formulation of the Malay States Land Code during the independence era (Phase 3: 1948-1963)

<table>
<thead>
<tr>
<th>Regulation and the states involved</th>
<th>Formulation of The National Land Code</th>
</tr>
</thead>
</table>
| All states unite under Federation of Malaya. Malayan Union was formed (1946) and Federated and Unfederated Malay States unite forming Federation of Malaya. Forming Federation of Malaya (1948) | 1) Setting up: The Federal and State Legislative Council and introduced the written constitution (1948)  
  The Malay States achieved independence (1957)  
  3) Statute 1886 was replaced by the Torrens System  
  a) Singapore (1956)  
  b) Penang (1966)  
  c) Melaka (1966)  
  4) Enforcement  
  1965 Land Code  
  3) Division of power under the Federal Constitution.  
  - land included under the list of state  
  - The Federal Parliament has the power to standardize laws in all Malay states.  
  4) Personal ownership of land can only be granted by the government through a registration process and this was known as the Torrens System / Ownership Registration System.  
  - Formulation of the National Land Code (1963) |

Source: Mohd Ridzwan Awang (1987), Salleh Buang (2007),

The federation of Malaya had formed the Federal and State Legislative Councils with the introduction of a written constitution. After independence in 1957, all statutes concerning land were replaced by the Torrens System. The conversion followed similar developments in Singapore in 1956, Penang in 1966, Melaka in 1966 and the enforcement of The 1965 National Land Code. According to the Federal Constitution, matters concerning land are under the purview of the respective states. The federal parliament is only empowered to standardize the various laws between the states. In the Malay states, personal ownership of land is only possible through a grant from the government and this is done by registration. This practice is known as the Torrens System or the Registration of ownership system. The adoption of this system paved the way for the formulation of the National Land Code in 1963.

On the other hand, in the straits settlement, a more stable deeds system was enforced in 1886. This statute was applied until it was replaced by the Torrens System in 1897.
System in Singapore in 1956. In Penang and Melaka the conversion took place on 1 January 1966.

Table 4: National Land Code and its Enforcement (Phase 4: 1965- Today)

<table>
<thead>
<tr>
<th>Regulation and the states involved</th>
<th>The National Land Code and its enforcement.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peninsular Malaysia</td>
<td>1) Ammended and grouped all laws pertaining to land: ownership, registration of ownership, transactions and collection of proceeds. The National Land Code (1965)</td>
</tr>
<tr>
<td></td>
<td>2) All states in peninsular Malaysia had uniform land laws.</td>
</tr>
<tr>
<td></td>
<td>3) Enforcement of land acts according to the Torrens System. (1 January 1966)</td>
</tr>
<tr>
<td>Sabah and Sarawak</td>
<td>1) Laws different from those employed in the peninsular. Sarawak: Sarawak Land Code (CAP 81) also based on Torrens. Sabah: Sabah Land Ordinance (CAP 68) (not based on the Torrens System)</td>
</tr>
</tbody>
</table>


Following from table 4 above, table 4 chronologically outlines the enforcement of the Torrens-based National Land Code. In peninsular Malaysia, amendments and efforts towards grouping and standardizing all laws pertaining to land, its holding, registration of ownership as well as transactions involving land and proceeds are spelled out in the 1965 National Land Code. With it, all states in peninsular Malaysia observed common laws pertaining to land administration effective 1 January 1966.

However, Sabah and Sarawak observed different land laws compared to states in the peninsular. Sarawak observed the Sarawak (CAP 68), which incidentally is also based on the Torrens System. Sabah on the other hand, observed the Sabah Land Ordinance (CAP 68) which is not influenced by the Torrens System.

Finally, commencing 1 January 1966, the Torrens-based National Land Code was implemented. This goes to show that the presence of the British in Malaya has led to the conversion of land laws from those based on a mix of Malay customs and Islamic law to those based on the Torrens System, which originated in South Australia. Till today, the Torrens-based 1965 National Land Code is still in use.
3. The Torrens System: Main Principles

There are two main principles of this system: the 'Mirror Principle’ and the 'Curtain Principle'. The 'Mirror Principle' refers to the register which reflects all important details regarding ownership in a particular piece of land like the owner’s name and details of the land like size, location, survey plan and its boundaries. It is called the mirror principle because when one intends to purchase or conduct any form of transaction pertaining to a piece of land, all relevant information on the land can be obtained from the registration book at the district or state land office. In other words, a prospective buyer or anyone who wishes to conduct a transaction on a piece of land will have access to all relevant information on the said land. This also includes information on the status of the land like whether it has been mortgaged, leased, or whether there are easements or a caveat and the like (Mohd. Ridzuan Awang, 1987).

The second Torrens principle is the 'Curtain Principle’. It concerns the register. If a prospective buyer or whoever wants to check on the status of a land, he/she only needs to look in the register. Information from the register at the land office is definitive. Section 340(1) of the 1965 National Land Code guarantees an indefeasible title to those included in the register. The land register is the central aspect of the Torrens System. Its purpose is to simplify land transactions and spare those conducting realty transactions high conveyancing cost and time before ownership of a land can be verified (Salleh Buang, 2007).

4. The Need for an Integration of Islamic Principles: An Analysis.

4.1 The register is not necessarily everything: The need for reassessment of inactive land.

According to the Torrens System, the register is everything. Even though it was meant to save those involved in land transactions considerable cost and time in verifying ownership of a piece of land, it however, does specify treatment of inactive land. The mirror and curtain principle do not make any reference to unproductive land as required by the syari’ah which has a specific treatment for land that has been left idle for more than three years. Neither is the Torrens System consistent with the stipulations in the national Land Code which states that land classified as for agricultural must be developed for that purpose within three years and continuously used in such a way. Part (c), (d) and (e), Division III, part 6, section 115, National Land Act [Act 56/1965] states:

(c) that the whole area of the land of the underground land, other than any part thereof  
(ii) used for any of the purposes mentioned in paragraph (e) of that subsection, or

any other purpose which the State Authority may specially authorise, 
shall be brought fully under cultivation within three years of the relevant date;
(d) that the area of the land referred to in paragraph (c) shall be maintained and cultivated according to the rules of good husbandry; and
(e) that the said area of the land shall be continuously cultivated:

According to a study by Fuadah Johari (2011), a lack of enforcement on agricultural land which have been left idle for more than three years has caused quit rent on these land to fall into arrears; eventhough the condition for enforcement has been clearly stated in the 1965 National Land Code (National Land Act [Act 56/1965]). The accumulated arrears happens when land owners have passed away and their beneficiaries have yet to claim ownership of the land as there is no urgency on their part to do so because it also means having to settle the arrears in quit rent whilst the transfer proceedings is in progress (Fuadah Johari, 2011). The study also reveals that the three years of activity proviso in the definition for agricultural land can be traced to the Islamic influence on legislation on realty which is the *Ihya’* concept enforced from 1523-1605, as explained in table 1 of the chronological process section.

This study proposes that the system ensures that agricultural land be kept active and there be strict enforcement on idle land as stipulated by the *Ihya’ al-Mawat* principle and this be made an additional requirement in the registration of agricultural land. In principle, *Ihya’ al-Mawat* concerns unowned land. However, in the context of Islamic Economy, as khalifah we are required to develop God given resources; and that includes land. Ownership of land is not absolute and real estate should not be a means of amassing riches. Man being khalifah, hold property in trust and thus as Muslims we are obligated to manage and develop that have been entrusted to us as best we can in order to achieve *al-Falah* (Muhammad Arif, 1985). Seizing idle land from owners is a form of enforcement that serves as a stern reminder to land owners to settle their quit rent on time. It is one of the measures taken to reduce the ever growing amount of unsettled quit rent. Seizing idle land not only helps prevent from land being left idle and unproductive but also reduces the chances of accumulating unpaid quit rent. Findings from the study suggest that monitoring be conducted in April or May every three years.

4.2 The issue of confining property to a particular group of people.

Islam denounces all forms of investment in unproductive activities like freezing property, hoarding wealth and wealth accumulation. In this sense, imposing taxes acts as an instrument that instills and promotes productive investment. In verse

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1 *Ihya’ al-Mawat* means; reclamation or the revival of dead (mewat/mawat) land, creates a right of ownership with the claimant being given a *tapu* (grant or document)
7, Surah Al-Hasyr: “What Allah has bestowed on His Messenger (and taken away) from the people of the townships, - belongs to Allah, - to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which he withholds from you.”

The verse above underscores the importance of mobility of property so that wealth can be shared in the community and not remain with a select group. The idea of a land register needs to be reviewed so that it does not operate on the mirror and curtain principles only. It has to reflect humanitarian values as well. The verse above stresses the need to prevent wealth from remaining with the wealthy indefinitely.

This verse served as a reference for Khalifah Omar Al-Khatab when left to decide what to do with newly acquired territory after a battle. He was of the view that spoils which may be equally divided among soldiers involved in the battle did not extend to land. According to him it referred to mobile items and not fixed belongings like agricultural land (Abu Yusuf, 731M–798M). He argued that if land were to be divided up among soldiers as advocated by the principle of Ghanimah, then the state would lose out on the income from taxes and proceeds from it. Furthermore he believed that land should be preserved and belong to the state for the benefit of future generations (Mahmood Zuhdi b. Abdul Majid, 1992). During the process of registration, land should be assessed in terms of its condition and the need for its preservation for future needs. Registering a piece of land should not be an unconditional right in the allocation of land. In a situation where there is a conflict of interest between an individual’s rights and the interest of the ummah, then the latter should take precedence. The Torrens principle that makes the register indefeasible against a title search needs to be reevaluated in the light of issues discussed above.

4.3 The Intrepertation of Abu Ubayd about: “al-Kharaj bi al-Doman”

Al-Kharaj bi al-Doman is the prophet’s hadith which means the yield or proceeds is a form of assurance (Hossam Elsefy, 2007). Abu Ubayd interpreted this as “al-Kharaj (the yield or income from taxes) acts as an assurance for security or protection (Abu Ubayd, undated). He further explained that if one owned a servant, the servant may be asked to do his biddings. If however, one were to discover a disablement on the servant, he can be returned to the seller (together with their disability). If on the other hand the servant gains or obtains something for his owner, then the owner has every right to access over it. This is the case because it is seen as a ‘proceed’ that comes with an assurance since if the servant dies, then the loss is born by his master. As for quit rent, eventhough originally it was meant for al-Kharaj land
(land belonging to ahl Dhimmi²), which should be given to the soldiers involved in the battle. Khalifah Umar however, decided to leave it to the ahl Dhimmi on condition that they pay Al-Kharaj (a form of tax) (Abu Ubayd, 2006). What can be gleaned from this event is the dynamism of the taxation system implemented by the early Muslim leaders. Al-Kharaj bi al-Doman has enabled Muslim leaders in the past to put into effect policies which are practical, that ensure agricultural land is not only preserved and protected but are also productive. The productivity of the land easily offset the cost of quit rent imposed.

Also revealed in the study conducted by Fuadah Johari dan Patmawati Ibrahim (2010), is that even discretion was exercised on top of some flexibility in the al-kharaj system during the the reign of the khalifah from 634-785M. Landowners only had to pay what was affordable (S.H. Hasanuz Zaman, 1981) to them and taxes on infertile land was abolished (Yahya b. Adam, 1958). Farmers were not compelled to sell their crops just to pay the quit rent. This ensures that farmers are not burdened because taxes imposed are fair and reasonable (S.H. Hasanuz Zaman, 1981). in addition to that other factors that was taken into account then was the flood level of a river (Nile in Egypt) in determining the amount of tax for different districts, assessing the level of fertility (Richard S. Cooper, 1976) of and determining the type of soil (for various crops) by studying soil composition. All these are done in the interest of the landowner, so that they are not taken advantage of (Al-Mawardi, 2000). Tax exemptions are also given in cases of extended drought, plant disease outbreaks, or other factors beyond our control would exempt landowners from Al-Kharaj until the situation improves (Hailani Muji Tahir, 1988).

The Torrens System unfortunately does not make provisions for ‘unforeseen circumstances’ such as above. Although registration of land has been simplified with the quaternion of tax payable fixed, the system does not monitor land use to ensure optimum utilization and productivity. The absence of monitoring has inevitably affected the efficiency in tax collection as stated in a study by Nor Aziah Abdul Manaf (2006) which was conducted over 11 states in Malaysia and it was found that the percentage of uncollected tax in certain states grew from 1996-2001. In 1996 there was RM 262.1 million of arrears in land tax, followed by RM 269.1 million in 1997. That is a 2.67% increase. In 1998 the arrears further grew to RM 362.6; which is a 34.75% increase. The trend continued the following year to RM 433.269 (an increase of 19.49%). In 2000 it continued to grow by 31.47% and finally another 11.78% in 2001 to RM 636.7 million. The huge amount of arrears suggests that there could be some weakness in the current system and that it does not meet a particular

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² ahl Dhimmi means; ‘protected’ or ‘covenanted’ people, non-Muslim subjects, specifically Christians and Jews. A dhimmi has extensive rights in an Islamic State though his land is subject to higher taxes (see kharaj and jizya) in lieu of his exemption from military duty and zakat tax.
need. This also points to a need to reassess the current realty taxation system. A more dynamic system and one that is based on syariah principles is more suitable.

4.4 Taxes are only levied on productive land: No tax imposed on residential land

In a discussion of A-Kharaj, Abu Ubaid provided justification for why land tax should be limited to productive land and those with potential to be developed by referring to the practice by Khalifah Umar who imposed tax on productive land; regardless of the type of crop; i.e. wheat, fruit or whether the crop was harvested or not. In this instance land used for residential purposes was exempt from tax (Abu Ubayd, 2006). As such, according to fiqh principles on realty tax, regular monitoring of actual land should be conducted. The Torrens system does not make provision for this. Its main emphasis is the registration of land in terms of ownership and land use or function. Quit rent is determined on the basis of how the land is classified: agricultural, residential or industrial (National land Code [Act 56/1965]).

Comments made so far concerns land for buildings. For three years, these land cannot be used for other purposes other than what it is intended for like using it for agricultural or industrial purposes is prohibited. Land designated for construction should also be preserved, not abused or coverted without written permission from the authorities as stated in subsection (a), Division III, Part 6, section 116, of the National Land Code [Act 56/1965]. Also included under this is land designated for the construction of residential buildings. Even though the quit rent charged on residential land is not high; it is seen as a necessity as meeting a basic need; a form of daruriah in Islam. Therefore this study proposes that land for residential use be managed on the Abu Ubayd principle; where residential land is exempted from tax (Abu Ubayd, 2006).

The Torrens principal of registration also enables ownership according to strata. Strata title is awarded for each unit or lot for multi-level or a plot of land which has been subdivided and sold. Strata title is issued on four types of land units: firstly is the type where for each unit in a two storey or higher building via the process of subdividing the building. Or secondly, for each plot of land that has two or more buildings not more than four storey high. Thirdly, a combination of the first and second variety on alienated land. Finally, a temporary block erected on an existing building on a piece of alienated land (Pejabat Pengarah Tanah dan Galian Wilayah Persekutuan Kuala Lumpur (Director of Land and Mineral Office, Kuala Lumpur Federal territory), 2009). This form of ownership title greatly facilitates administration of ownership. Strata ownership is also subject to quit rent. The amount of taxes collected by each state is limitless and this will further encourage more high-rise development. It has also become a trend these days for high rise residences to be built especially in big cities where land is scarce. Living in such limited space can be unpleasant to say the least for the people who not only share space but also
facilities. If only this kind of accommodation is exempted from quit rent it will be most appreciated by most people especially those in the low income level.

However, if quit rent is not collected from this type of accommodation, the income for the state government will be greatly reduced. Therefore this study would like to suggest that tax on agricultural and industrial land be reviewed to bring it up to date with the current state of affairs. Quit rent for agricultural land for instance has been found to be at a very low level after 47 years of implementation of the NLC as seen in table 5 below:

Table 5: Current tax schedule for rubber plantation on agricultural land (revised from 1994-2007) compared with that in the 1965 NLC

<table>
<thead>
<tr>
<th>Item</th>
<th>Terengganu</th>
<th>Kelantan</th>
<th>Melaka</th>
<th>Johor</th>
<th>Negeri Sembilan</th>
<th>Town Land</th>
<th>Rural land</th>
<th>Perak</th>
<th>Pulau Pinang</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate per hectare latest revision (1994-2007)</td>
<td>15.00 per hectre</td>
<td>60.00 per hectre</td>
<td>25.00 per hectre</td>
<td>44.00 per hectre</td>
<td>30.00 per hectre</td>
<td>69.00 per hectre</td>
<td>66.00 per hectre</td>
<td>63.00 per hectre</td>
<td>58.00 per hectre</td>
</tr>
<tr>
<td>Rate in NLC* (1965)</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
<td>40.47 per hectre</td>
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</tr>
<tr>
<td>difference</td>
<td>-25.47</td>
<td>-15.47</td>
<td>3.53</td>
<td>-10.47</td>
<td>28.53</td>
<td>25.53</td>
<td>22.53</td>
<td>17.53</td>
<td>1.53</td>
</tr>
</tbody>
</table>


Based on table 5 above, the tax for rubber plantations in rural areas in Terengganu, Kelantan, Melaka, and Group B rural land in Negeri Sembilan, Perak dan Pulau Pinang is much lower than that set in the 1965 National Land Code. This shows that even after 47 years of enforcement of the Land Code, land tax or quit rent for agricultural land is still among the lowest. It is proposed that if residential land tax is abolished, then the tax on agricultural land needs to be reviewed so that it is more competitive and can contribute significantly to that state and national economy. Furthermore, income from rubber has grown tremendously to a point that it no longer comensurates with the negligible amount paid in tax. On table 4 is only one example of land tax on a type of crop. This study also points to a need to review land tax or quit rent for other types of crops especially those with commercial value that
generates high returns to the farmer especially the commercial player in agriculture sectors.

5 Conclusion

The Torrens System of land tax has been found to lack dynamism and there exists some inherent shortcomings. Among its shortcomings that need to be overcome are issues regarding registration. Registration is not all there is to efficient land administration. The mirror and curtain principles are an oversimplification of the process of land administration. Secondly the issue of keeping land to a particular group of people. Furthermore the Torrens principle is against that of Abu Ubayd’s “al-Kharaj bi al-Doman”. These shortcomings call for a need to review quit rent on residential land as it is against what Abu Ubayd advocated in his description of tax administration during the time of Khalifah Umar where tax is imposed only on productive land that is capable of generating returns. Finally, a review of the land administration system is very much needed not only for the sake of improvement but also the need to integrate Islamic principles into the Malaysian realty tax framework; back to how it was in the past when Islamic principles and practices as well as the adat were the guiding principles in legal practices in the Federation of Malaya.

References


Fuadah Johari (2011), Pelaksanaan Sistem Cukai Al-Kharaj Dengan Cukai Tanah Malaysia: Suatu Analisis Perbandingan, (Tesis, PhD, Department of Shariah and Economics, Akademy of Islamic Studies, Universiti Malaya, Kuala Lumpur, Malaysia).


