

## SQUATTERS ON RAILWAY LAND: LEGAL ISSUES AND RECOMMENDATIONS

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**Abstract:** *The advancement of railway transportation in Malaysia is one of the focus areas in the national development plan. The railway authorities are allocated with reserved land for purposes of railway tracks development. The reserved land is often occupied by unauthorised persons who are termed as squatters pursuant to the National Land Code (Act 56 of 1965). The objective of this article is to identify the challenges in enforcing the law and procedures relating to the eviction of squatters from the railway land. The methodology adopted is literature review to establish the issues relating to the management of squatters generally and squatters living on railway land specifically. The discussion will also focus on the powers of the State Authority, local authority and railway authority in dealing with the squatters on railway reserved land and propose a mechanism to improve the present system to overcome the weaknesses in enforcing of the law relating to eviction of squatters on railway land.*

**Keywords:** *Enforcement, Eviction, Squatters, Railway Reserved Land*

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### Introduction

#### *Historical Background of Squatters in Malaysia*

Prior to the introduction of the Torrens system into the Federated Malay States in the 19th century, the land administration system prevalent was the Malay Customary Tenure and the English Deeds system introduced by the British. The Torrens system stipulates the requirement that ownership of land can only be secured by registration. The State Authority is given full control over the land within the boundaries of the State and rights to confer ownership to any person or corporation as a freehold (perpetuity) or leasehold title to be held for a period of 99 years (Zakiyyah Jamaludin, 2005).

This was in contradiction with Malay customary land tenure where its clearly stated that all land belong to the Ruler and individuals can claim right of occupation of land by paying one-tenth of the total income earned from cultivating the land. According to the principles of the customary land tenure, every man is entitled to clear and occupy forest and waste land. Tress planted, and house built can be mortgaged, sold and inherited by the children. The requirement inter alia, forfeiture to Ruler if the land is abandoned by the owner (paddy and fruit land: 3 years, gambier and pepper plantations: one year). He was liable to ejection if he without justification abandoned his land or left it uncultivated longer than usual period (*Sahrip v Mitchell & Anor (1879) Leic 466*). The payment must be done without failure and the land must remain cultivated at all times to avoid forfeiture by Ruler (Ahmad Ibrahim, Judith Sihombing, 1989). The decision in *Sharip v Mitchell (1879) Leic 466* reinforced the principle laid down in *Abdul Latif v Mohamed Meera Lebe (1829) 4 Ky 249* which recognized the right of the cultivator to remain on the land as long as he cultivates and pay the owner a share from the revenue generated.

In the early 1880s, for the first two to three decades of tin mining activities in Kinta, Perak, the major problems faced by the British Administration in furthering the development mining industry was inadequate supply of labor (Loh F.K.W, 1988). The Malay Rulers favored the option of opening door to immigrants particularly to Chinese and Indians to work in tin mines and rubber plantations as vast majority of mines at least until the 1900s largely depended on labor-intensive excavation methods (Suriati Ahmad, Jones D., 2013). The influx of immigrants into the Malay States were not balanced adequate housing by the British administration, thus resulting in the migrants to build squatters dwelling near their work sites by the mines and rail tracks (Azizah Kassim, 1982). British administration and migrants assumed they only stayed temporarily in the Malay states and would return to their native countries once their service is no longer needed (Zakiyah Jamaludin, 2005).

By building squatter's settlement, they could move easily from one place to another once existing place were exhausted of their resources or they could return to their native countries. On the same note, they were unable to build proper housing due to their low income as they were contracted to the wealthy tycoon (*tawkays*) until they had redeemed themselves of their debt. This has led to creation of squatters' colonies in places where it was deemed to be less likely to be developed such as along riverbanks, ex-mining land and land adjacent to railway tracks.

### ***The Emergence of Railway Squatters***

In *Bukit Lenang Development Sdn Bhd v Penduduk-Penduduk Yang menduduki Atas Tanah HS (D) 151079-HS(D) 151601, Mukim Plentong, Daerah Johor Bahru [1999] 6 MLJ 26*, the definition of squatter is as follows:

“a person who enters upon another's land and remains thereon to the detriment of the present owner is a trespasser, pure and simple. On the facts, the court found that the defendants were squatters simpliciter and were therefore not possessed of any rights. In fact, when the plaintiff become the registered proprietor, the defendants became mere trespasser”.

In Emergency Ordinance (Essential Powers) 1969 (Ordinance 1 and Ordinance 2) Essential Rules and Regulations (Squatter Eradication) 1969 defines “Squatter Occupants” as:

“person/persons actually occupying land or the said structure or those maintaining, managing or in control of the premise either for his own use or as an agent acting for others”

Squatter dwelling is known as illegal dwelling because it was built illegally without the owner’s consent either in public or private land. It is also called flash dwelling because the settlement growth is rapid and fast growth of the settlement. Squatter areas are illegal settlement with diverse socio-cultural, economics, politics and physical environment. According to Railway Assets Corporation (RAC) Annual Report in 2014, total railway land is 30,755.41 acres stretching from Padang Besar, Perlis (Northern Region) to Johor and Gemas (Southern Region) and connected to Tumpat, Kelantan (Eastern Region) with railway track alignment spanning approximately 1,560 kilometers in the Peninsular Malaysia. Historically, rail operators maintained an open area on both sides of railway lines for operational, maintenance and safety purpose. This area is called rail reserve. With the vast acres of railway land in Peninsular Malaysia, the squatting phenomenon in the railway land as what shall be considered as safety zone for operational purpose are now becoming a place of residences and worship, and commercial activities.

This research focuses on the squatters occupying the railway land in Peninsular Malaysia and statutory provision available to RAC in eradicating the railway squatters. While most of the researches dedicated to address the issue of urban squatting and the need for low income housing provision for the urban poor and squatters, it is highly appropriate time to find the solution to the escalating numbers of railway squatters on public lands by identifying the law and legislation available for RAC, state authority and local municipality to cater for the squatters and highlighting the need to give strategic solutions to the problem. The danger here is that the decreasing of railway reserved land in the future while wasting public finance to relocate the squatter’s settlement. The objective of this paper is to add to the existing literature on eviction of squatters and suggest reforms to the present law and procedure.

### ***The Establishment and Management of Railway Assets Corporation***

The management of railway assets and operations was given to the management of the Malayan Railway Administration (MRA) (*Pentadbiran Keretapi Tanah Melayu*) pursuant to the Railway Ordinance 1948 (repealed Ordinance). In 1991, RAC as a Federal Statutory Body was established under section 89 of the Railways Act 1991 (Act 463), commence officially as an organization on 1<sup>st</sup> August 1992 and gazetted under Volume 36 No.16 on 30<sup>th</sup> July 1992. RAC was fully operated on 1<sup>st</sup> October 1992. The role of developing, supervising and monitoring the railway lands are shouldered by RAC pursuant to the Railway Act 1991. In the case of *Railway Assets Corporation v Elmsparks Holding Sdn. Bhd.* [1997] 4 CLJ 136, it was held that the RAC is established pursuant to the Railways Act 1991 and all properties of the railway in Peninsular Malaysia is vested in the RAC.

Under the Railways Act 1991, the RAC is vested with two (2) types of land, railway alienated land and railway reserved land. Total area of railway land is 12,638 hectares (30,755.41 acres). Alienated railway land carries with it certain duties. Briefly these are:

- (a) Payment of the annual quit rent to the State Authority ; and
- (b) Compliance with the express and implied conditions affecting the land.

Breach of any of these duties, according to section 127 of the National Land Code (Act 56 of 1965) (“NLC 1965”), if not remedied in time, can result in forfeiture. Beyond that, according to section 120 of the NLC 1965, the land can be made subject to certain “restrictions in interest” (e.g. the land cannot be sold or transferred without the consent in writing of the relevant authority).

### ***Squatting on Government-owned Land***

Society will obtain whatever benefits from the use of the government land in the absence of illegal occupation by the squatters on a particular land. The land consists of negligible area such as space reserved for highways, railways, open spaces, flood planes and hillsides which falls under the jurisdiction of the government. The benefits are lost when the squatters occupy it. The loss derived from forsaken benefits from infrastructure projects, land taxes, revenue from sale of the land to private company for the purpose of commercial, residential and industrial development. It is interesting to consider the government’s tolerance for such “invasion” as the costs for resettlement and eviction of the squatters are high. It is also due to the roles played by the “squatter-organizer”, a community leader who govern the squatter settlement as to avoid the risk of eviction in consideration of informally payment from the squatters. The role is to work as intermediaries between the squatter’s occupant and political leader, government official and law enforcing agencies.

Radiyah stated that politics and squatters depends on each other for the purpose of survival. (Radiyah et al., 2004) On one hand, political leaders need support at the “grass roots” level from the squatters settlement while on the other hand, squatters need politicians to protect them against eviction or resettlement. According to Shah N. (2013) formalization act as a vital goal of government’s policy, which involves moving squatters population to formal housing sector and willingness to pay for the formal housing should be at par with the payment from squatters to the squatter-organizer.

### ***Squatters and Legislation***

It is acknowledged that there are various statutes that can be useful for the enforcement against squatters by invoking provisions in NLC 1965, Street and Drainage Building (“SDBA 1974”) and Essential (Clearance of Squatters) Regulation 1969 and Order 89 of the Rules of Court 2012.

Under section 5 of the NLC 1965, the definition of state land is as follows:

“State land” means all land in the State (including so much of the bed of any river, and of the foreshore and bed of the sea, as is within the territories of the State or the limits of territorial waters) other than:

(a) Alienated land;

(b) Reserved land;

(c) Mining land;

(d) Any land which, under the provisions of any law relating to forests (whether passed before or after the commencement of this Act) is for the time being reserved forest.”

Based on the definition above, state land can be all lands situated in any state with exception to alienated land, reserved land, mining land and any land which has been reserved as forest reserve land. Under section 425 of NLC 1965, the definition of the State Land has been

expanded to cover all land held or on behalf of Federal or State Government, local authority or statutory authority exercising powers vested in it by Federal or State law (Azizi Zakaria, 2013).

Based on the definitions above, any alienated land or reserved land which has been vested to any Federal or State government, local authority or statutory authority exercising power vested in it by Federal or State law can be considered as State land and entitled to the protection given by section 425 and 426 of the NLC 1965. To strengthen the statutory protection given by law to the registered proprietor under section 340 of the NLC 1965, section 341 of the NLC 1965 did not recognize the concept of adverse possession against the proprietor regardless the period of possession, unlawful occupation or occupation under any license. Under section 425 of the NLC 1965, it is an offense to a person without lawful authority occupies or erects any building on any state land, reserved land or mining land. With the latest amended to section 425 of the NLC 1965 according to National Land Code (Amendment) Act 2016 [Act A1516] which comes into operation on 1<sup>st</sup> January 2017 via P.U.(B) 527/2016, the penalty for its violation has been increased to a fine of not more than RM500,000.00 or imprisonment up to five years upon conviction. Under sub-section (2), State land shall comprise all land held or on behalf of the Federal or State Government, local authority or statutory authority exercising powers vested in it by Federal or State law. For this regard, it shall be applicable to all railway lands vested to RAC.

Section 425A of the NLC 1965, provides punishment of a fine not exceeding RM 2,000.00 or imprisonment for a term not exceeding six (6) months or to both upon conviction on the offense of uses or occupiers the air space above State land or reserved land by erecting, maintaining or occupying a roof, canopy, bridge or any other structure without lawful authority. Under section 426A of the NLC 1965, the power to arrest and seize is be given to any police officer not below the rank of Inspector, Registrar, Land Administrator, Settlement officer or other officer duly authorized by the State Authority to arrest anyone squatting on the land without the requirement of warrant and to seize the properties (building or crops) found on the land the name of State Authority. Reference to RAC's Annual Report in 2014, administration (eviction) notices were given to squatters to notify that offense under section 425 of the NLC has been committed and requested the squatters to vacate the land were successfully given in cases where the land is needed for the development for example in *Projek Landasan Berkembar Elektrik Gemas ke Johor Bharu* where 1,257 squatters have vacated the railway land (Railway Assets Corporation (2015). Annual Report 2014). As for the other places, the same action has not been taken. As for the requirement for eviction notices, the code does not mention about the requirement before evicting or demolishing any buildings or crop on the land.

Section 70 of the SDBA 1974 prohibits erection of any buildings without written permission of local authority. Any person who erects a building in contravention of SDBA or fails to comply with written direction of local authority shall on conviction be liable to a fine not exceeding RM 50,000.00 or to imprisonment not exceeding 3 years and shall for continuing offense after conviction be fined for RM 1,000.00 for every day. A magistrate shall make a mandatory order requiring a person convicted under subsection (13) on the application of local authority to alter in anyway or to demolish the building. Under section 72(1), local authority is given power to serve notice to owner to require the latter to demolish building erected and failure to comply will render the owner upon conviction to be guilty of an offense and be fined RM 250.00 for everyday continued offense after the expiry of the notice. It must

be noted that notice (the period must be at least 30 days requiring the owner to vacate the building) is required under section 72(6) in the case where the building to be demolished by local authority.

Emergency (Clearance of Squatters) Regulations (ESCR) 1969 give power to local authorities to enter into any State Land as provided under section 5 of the NLC to demolish squatter's hut. Under Regulation 4 of the ESCR, local authority, its agents or servant may enter into such lands by day or by night to demolish any squatter hut on such lands. The authority is empowered to remove any person or movable property in any squatter hut and to demolish any of the squatters' hut. Under this regulation, there is no requirement to serve any notice to the evictee on the State land. The application of ESCR on the private land is provided for under Regulation 6, 7,8 and 10. Under Regulation 6, the local authority may direct the owner by way of notice to remove any squatter hut on his land or on his inability to do so within the specified period in the notice, the owner may request the Local Authority to remove the squatter hut upon depositing certain sum of money. Removal of squatter hut on private land must be done after seven (7) days period of notice has ended under Regulation 7. Under Regulation 10, local authority has power to demolish squatter hut independent of the request of the landowner if it is in the opinion of the local authority:

“it is expedient and necessary to do so having regard to the public interest then notwithstanding Regulation 6 and 7, the local authority, its agents or servants, after giving 7 days' notice in writing to the occupier:

- (a) Enter by day and by night any private land for the purpose of summarily demolishing any squatter hut; and
- (b) Remove any person or any removable property in any squatter hut; and
- (c) Summarily demolish any squatter hut on the land.”

Action taken under ESCR is said to be severe as the eviction can take place at any time during day and night to demolish the squatter hut and to remove the occupant from the land (SZ Kader et al., 2013). However, it is noted that two (2) rights must be accorded to an evictee before and after the eviction. The first is to give seven (7) days' notice prior to the enforcement of the order to demolish the squatter dwellings as provided for under Regulation 8 of the ESCR and the right given to the occupant to claim any property removed from the squatter huts within 14 days from the removal day as provided for under Regulation 9 of the ESCR.

Reference to Railways Act 1991, shows that there is no direct provision providing for the power of enforcement against squatters to RAC. According to RAC Annual Report 2014, the demolishing and enforcement against squatters is done under the purview of section 425 of the NLC 1965 and Order 89 of the Rules of Court (ROC) 2012. This application is available to persons claiming possession of the land against persons who entered and remained in the land without his consent. It is initiated by originating summon in Form 8A and acknowledgment of service is not required. The person entering and remaining on the land must not be a tenant or licensee holding over, or persons occupying with implied or expressed consent of the owner (*Bohari Bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343*, *K Elizabeth Sumana De Silve v Amir Sigh a/l Amrik Sigh [2013] 9 MLJ 625*). The cornerstone of the Malaysian land law is that “registration is everything” and this indicates

ownership of land is acquired by alienation from the State Authority and not from the long occupation of the land. The squatters are not entitled to any protection under the National Land Code 1956 (Act 56). The Federal Court in the case of *Sidek Bin Haji Muhamad & Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313 affirmed that squatters do not to get assistance from the law. Their rights are not recognised under the law nor equity.

The current trend however, seems to indicate the different approaches taken by the court in invoking equity as not to give the proprietary rights to the squatters but rather to give justices to the occupier and the landowner. In *Sentul Murni Sdn Bhd v Ahmad Amirudin Bin Kamarudin & Ors* [2000] 4 MLJ 503, the court granted vacant possession to the appellant subject to the appellant compensating the respondent in satisfaction of equity enjoyed by the respondent as the court recognized the latter as licensees and with consent of the state authority the respondent could occupy and continue to occupy the land. Various events indicated that the occupation of the land was known to or expressly or impliedly acquiesced or and encouraged by the State Authority or Dewan Bandaraya Kuala Lumpur (BDKL). The court contended that long occupation of the respondent was known to the predecessors of the appellant.

Similarly, in *Juta Permai Sdn Bhd v Mohd Zain Bin Jantan & Ors* [2001] 2 MLJ 322 where the application of alienation has been submitted to the state authority and the latter agreed that each settler was to be allotted 8000 sq. ft. at a cost of 50 cents per sq. ft. The settlers argued that had the occupancy been illegal previously, the State Authority would have taken action against them under section 425(1) of the NLC 1956 and in *Bohari Bn Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 the appellant (settlers of the agricultural land) applied for alienation from the state authority and there was evidence to show that state authority had approved the said alienation. Following the state government policy, a temporary occupation licence (TOL) were to be given to issued and eventually individual titles would be given to the settlers if they continued to cultivate the land and remained landless. However, although all requirement had been fulfilled by the appellant, the land was not alienated to them. Based on the cases, the court concluded that the settlers were not squatters simpliciter as there were evidence that the State Authority has consented or acknowledged the occupancy by way of evidence to show that the State Authority approved or confirmed the alienation of the said land to the settlers.

The analysis above highlights that the courts held that a bare notice to quit would not be sufficient to order the squatters to vacate the land as they were entitled to compensation and time to vacate. The court held that although the squatters are not to be recognized as the owner of the land they were considered as tenant in equity and therefore entitled for compensation. The decision in the cases above does not in any way recognize the right of the occupiers with consent as the court held that the application of Order 89 of Rules of the High Court (as it then was) only to be granted in cases of squatters simpliciter and not against those who had “triable issue” with regard to previously-approved alienation by the State Authority or the non-enforcement of section 425 of NLC 1965 against the occupants. It is worth to be noted that the encouragement or consent from the State Authority cannot be founded on the premise that the service provider or the relevant agency provided facilities and amenities, such as electricity or water supply. The court in (Permohonan Semakan Kehakiman No. RI: - 25-242-08 (*Noor Azman Bin Satar dan 60 yang lain v Datuk Bandar Kuala Lumpur*)) held that the providing of amenities and facilities does not change the status of illegal buildings and structures (which is built without the authorization of the authorities) into an approved

building within the definition of the Street Building and Drainage Act 1974 (Act 133) hence it is considered as a “squatter hut” within the definition of *ESSCR (Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf Awang & Ors [2007] 4 CLJ 253)*.

There is no other way by which the squatters can acquire the land except by alienation as mentioned in section 48 of the NLC 1965. The court held that the intervention or assistance of equity cannot be invoked where the statutory provision is clear on the matter (*Kerajaan Negeri Sarawak & Ors v Bashol Bin Abol (Deceased) & Ors and Other Appeals [2003] 1 MLJ 376*). This will deny the right of the squatters to invoke equitable estoppel against State Authority for promises made to alienate the land in their favour by the Collector or any other authority other than the State Authority pursuant to the provisions of section 13, 48 and 78(3) of the NLC. Section 13 of the NLC 1965 allows delegation of powers by the State Authority to the State Director, the Registrar, Land Administrator or other persons appointed under subsection 12(1) of the NLC 1965, but the delegated power do not extend to the power of alienation of State land to the squatters. This is in line with section 48 of the NLC 1965 and section 78(3) of the NLC 1965 which clearly provides that the right to indefeasibility of title will only occur by alienation from the State Authority and shall take place only upon the registration of the title (*Government of The State of Negeri Sembilan & Anor v Yap Chong Lan & 12 Ors. [1984] 2 MLJ 123*).

The legislation and cases analysed indicate that the approach taken by the court in determining whether the occupants were squatters simpliciter or armed with equity by occupying state land by determining the validity of building erected and valuing the weight of acquiescence or consent given by the State Authority without consideration on the provision of facilities or amenities. It is worth to clarify several misconceptions about eviction, as not all evictions are prohibited under the law. The prohibition against forced evictions do not apply in situations where it is carried out in accordance with the land and international human rights treaties, for instance, to displace people from hazard prone and dangerous areas, persistent non-payment of rent with the proof of financial ability to pay. Conformity with international human rights standards are important as eviction can be considered as a forced eviction if non-compliance although it complies with national legislation (UN Habitat, 2014). The enforcement for the abolishing of squatters on railway reserved land can be summarised as follows:

<b>Statutes</b>	<b>Authorized person</b>	<b>Section</b>
National Land Code Act 1965	Section 12 State Director and other State Officers.	Section 425 On conviction, to a fine not exceeding RM 10,000.00, or imprisonment for a term not exceeding 1 year. On abetment, on conviction to a fine not exceeding RM 10,000,00, or imprisonment for a term not exceeding one year, or to both.
Street Building Drainage Act 1974 (Act 133)	Section 11,12,13,14,15 Part V Local Authority or person authorized by local authority.	Section 11 Alteration to any building without the prior written permission of the local authority. Upon conviction shall be liable to: i. Fine not exceeding RM 25,000.00 and;

- ii. Mandatory order to alter the building or to demolish.

Section 12

Using building other than original purpose. On conviction:

- i. Fine not exceeding RM 25,000.00 and shall also be liable to a further fine not exceeding RM500.00 for every day during which the offence is continued.

Section 13

Erecting building in contravention to section 9, 9A and the Act, failure to comply with direction of local authority. Upon conviction:

- i. Shall be liable on conviction to a fine not exceeding RM 50,000.00 or to imprisonment for a term not exceeding 3 years or to both and shall also be liable to a further fine of RM 1,000.00 for every day during which the offence is continued.

Section 14

When the proceedings are not instituted in contravention to section 13, on submission of plan shall pay to the local authority a sum of prescribed fee which not less than 5 times but not exceeding 25 times.

Section 15

A Magistrate on the application local authority or of a public officer authorized by the local authority, make a mandatory order requiring any person convicted of an offence under the provisions of subsection (13) to alter in any way or demolish the building.

ESCR 1969	Municipal charge	in	Regulation 6,7, and 10.
Railways Act 1991 (Act 463)	Railway Corporation	Assets	Section 425 NLC and or 89 of RHC 2012 Section 89 Act 463

**Table 1: Summary of Statutory Laws Available on The Enforcement Of Squatters**

Due to the high number of railway squatters in Malaysia, the question arises as to the effective enforcement on eradication of the railway squatters. It is worth to note that on the effort to eradicate the squatters with the statutory provision given by the law, the improvement of knowledge and skills of the public officer dealing with land is crucial as in the case of *Che Minah Bt Remeli v Pentadbir Tanah Daerah Besut & Anor [2002] MLJU 202* that the failure of the Land Administrator to precisely state the action that should be taken by

the registered proprietor under section 129(4)(b) of the NLC 1965 is detrimental to their action in forfeiting the land. The uniqueness of this problem is the fact that railway squatters occupy different types of railway reserved land along the railway lines spanning from one state to another in Peninsular Malaysia. The existence of this right is considered in the light of application of Torrens system in Malaysia, the right of land owner through the paradigm of property law, and the development of law in land proximity to railway land. Researches to discuss the issue of railway squatters in Malaysia is wanting now as it has become a national issue especially during the aftermath of the flood in Kelantan in 2014 (Ivy Soon & S. Indramalar, 2015). Many squatters were unable to get assistance from the State and Federal Government in rebuilding their houses legally after being washed away by the flood as they were squatting on the railway reserve land and the amended section 425 of the NLC 1965 with the increased penalty upon its violation.

### **Methodology**

The research methodology adopted is literature review including statutory provisions, case law and scholarly articles relating to issue of squatters and squatters on railway land. This is a purely qualitative approach on discussion and analysis of conceptual and legal issues relating to the squatters.

### **Findings**

From the analysis of the laws and regulations, it is clear that the act of squatting is not recognised and in fact is an offence under law, baseless in equity and not entitled to *ex-gratia* payments to vacate the land concerned. On many occasions, the squatters relied on the promises, approval and support by the authorities to sanction the occupancy on the land. Such promises are not binding and not enforceable against the State authority to alienate the land under section 340 of the NLC1965. Likewise, the provision of amenities by government agencies will not imply the approval of the State Authority or the government to alienate the land to the squatters. The prevalence of railway squatters indicates the insufficiency of enforcement and implementation of the laws available within the present land law system as most of the enforcement are done if the land is required for the construction of development and railway projects.

The laws are clear on the power of the state authority, local municipality and RAC to deal with the squatters as there is section 425 of the NLC shall be available to cater the railway squatters either living on the railway reserved land or railway alienated land. The approach taken by the court is dominantly depending on whether the building of the house/structure was approved under the SBDA 1974. If it is not, then it is considered as squatter hut within the definition of ESCR 1963. The issue of railway squatters must be looked from different perspectives as to invite the solution such as the mixed-used development that allows the co-existence of housing for the squatters and the rail development (Anuar Alias et al., 2010). The provision of resettlement housing to the railway squatters must be highlighted to ensure all citizens to have decent homes.

### **Recommendations**

From the reading above, the problems with railway squatters relate to the issue of affordability and accessibility. Squatters occupying the informal settlement because the availability of job opportunities, accessible amenities and schools. However, they could not afford to legally occupy a house as the concept of affordability shall cover the ability to legally own or rent a house. The existing solution against railway squatters is by way of

eviction order may result on the creation of new informal settlements somewhere else. Therefore, in giving recommendations, these two factors above must be considered heavily

Khazanah Research Institute made some suggestions on homeownership (Khazanah Research Institute, 2015). First, a survey must be conducted at the *mukim* level to enquire the demand of affordable housing and land suitability. This is important to avoid mismatch in demand and supply of affordable housing. The survey at the *mukim* level shall convey information on demand-side such as from the working class, income level, young dependent and families. As for the supply-side, information such as land suitability assessment, land planning and zoning are equally important. Secondly, public must be equipped with knowledge to make prudent house-buying decisions as its instalment payment will consume a larger amount of household income. Financial burden is imminent if the household income is largely spent on the housing (Norazmawati M.S. & Muhammad Arkam C.M.,2008).

The introduction of regulated tenancy procedure should be advocated to improve affordable housing through tenancy. According to (Mazlan M.,2016) the obsession towards owning home shall be given new awareness, leaning favourably towards rental housing as to avoid financial burden to the purchaser or the occupants. In resolving housing affordability issue, the rental market is a viable alternative especially for relocations of job and education purposes. The most vulnerable people to the affordability pressures are the youngest and oldest age groups. Hence the mentality of ownership obsession shall be put to an end. In advocating the paradigm shift from purchase to rental, it can be seen that rental can give rise to financial impediment if not properly regulated. Though the rise of rent is inevitable, but proper procedures must be adopted to avoid imbalance in housing market which will eventually be self-destructive.

In balancing the two options above, the government must be willing to put rental housing onto housing agenda. Healthy housing agenda does not confine to only one type of tenure, that is homeownership (UN Habitat, (n.d.). It must have variety of tenure options thus a switch in the policy is vital. Hence, the practice of promising homeownership for everyone must be controlled as it is neither achievable or desirable although it can be a winning election manifesto (Kholodilin, K.A., et al., 2016). The housing market should be leveraged to enable people to choose an affordable and appropriate type of tenure according to their needs. This requires housing policy to act neutrally by avoiding tax exemption only for homeowners and creating inequality in any tenure group. In increasing the supply of the rental housing stock, the practice of Buy-to-Let (BTL) in United Kingdom can be viewed as good examples in encouraging active involvement of private landlords into the rental housing market thus reducing the government's expenditure on providing affordable homes to all citizen (Shawbrook Bank, 2017).

## **Conclusion**

It is vital to identify the comprehensive legal framework available for the railway squatters and RAC in exercising the rights and obligation as an owner of railway assets in Peninsular Malaysia and at the same time welcoming the solutions and attentions once used to cater for urban squatters to railway squatters. Judging at the current scenario, it is necessary to consider mixed-used development concept that allows the co-existence of housing and future rail development. It is hoped that the discussion will spur further research in the development of railway land especially in relation to its squatters and the development of law in land proximity of railway land. Relevant authorities must take opportunity to do functional

assessment on their land to apply a balanced and locally relevant land administration. Effective land management and initiatives are often frustrated by complex and non-transparent institutional and legal framework; and lack of human and financial capacities thereby causing priorities only on survival requirements.

It is hoped to fill the existing gaps in the literature. Much attention and recognition need to be highlighted in ensuring the demand and needs of both railway land squatters and RAC as an assets owner are well balanced. This is due to the fact that most of the literature discuss on urban squatters and its solution, overlooking the crucial legal issues surrounding the railway land's squatters living on the government land.

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