

An Overview of the Fraud and Forgery Challenges in Land Registration System

Yusri Zakariah¹, Salfarina Samsudin², Norshafadila Ngadiman³

^{1,2,3}*Faculty of Built Environment and Surveying, Universiti Teknologi Malaysia, Skudai Johor Bahru, Johor, 81310 Malaysia.
e-mail:yusrizakariah@gmail.com*

Abstract: *Fraud and forgery are two types of crime in the land registration system. Both crimes are essentially involved in the deception of making dishonest personal gain for oneself or to create loss for another. Many countries have successfully converted their land registration records from paper documents into the computerised system. In Malaysia, since 1995, many different land administration authorities have offered their services through e-government instruments such as Computerised Land Registration System (CLRS) and Electronic Land Administration System (ELAS). Nonetheless, these innovations are factored as the cause in the increase of fraud and forgery cases. This study reviews the fraud and forgery challenges in land registration system innovations related to the information ownership. The fraud and forgery challenges in Malaysia include the (i) limited power of Registrar or land administrator, (ii) lack of expertise and resources, (iii) computerised land registration system security, (iv) lack of concern among legal practitioners and commissioners of oath, and (v) the abuse of power. This study also informs the land administration authorities and practitioners about the significance and challenges to protect information against the misuse for fraudulent purpose.*

Keywords: *Fraud; Forgery; Land Registration System; Land Ownership; Land Administration*

1. INTRODUCTION

Land administration in Malaysia is fundamentally based on the amended Torrens title system originated from South Australia (Salleh, 2007; Ismail, 2011). Torrens title system makes The Register Document of Title a conclusive evidence of land ownership (Maidin and Khadouf, 2009). The system operates in a way that a person or interest will insert their name in the title and proceed to registration once the prescribed procedure is conformed and recorded. In this case, the person or interest with the title registered becomes the indefeasible proprietor or interest holder to the exclusion of all others (Karim *et al.*, 2011). In Peninsular Malaysia, land administration has evolved from manual system to automation or computerised system, and recently to electronic system (Karim *et al.*, 2010). Since 1995, all States in the Peninsular Malaysia have gradually used automation system i.e. the Computerised Land Registration System (CLRS) under Schedule Fourteen of NLC which is a significant shift from manual system. In 2008, the Parliament passed an amendment to NLC, cited as the National Land Code (Amendment) Act 2008 [Act A1333]. This was effective on 1st January 2009. The amendment introduced a new Section 5D and Sixteenth Schedule i.e. the Electronic Land Administration System (ELAS). This new law sets the implementation of ELAS throughout the Land Registry and Land Offices in the States of Peninsular Malaysia.

Unfortunately, although the system and technology are upgraded to cater the current need, the attempts on promiscuous crimes in the land administration system are inevitable. Hadi and Paino (2016) stated that fraud and forgery of documents are considered as white-

collar crime offences because they are associated with the modification of documents with the intention to deceive others and normally involve illegal monetary benefits. These crimes in land registration have increasingly become a primary concern in Malaysia. The increase of fraud in land dealings has triggered uneasiness among registered proprietors since the exclusive ownership of their lands may easily be converted without notice. Consequently, the aftermath was a significant and critical loss of confidence in the Malaysian property market and the credibility of land-related law to the land registration in the direction of guarding against such a land fraud (Sharifah Zubaidah, 2008).

Low (2008) acknowledged that providing land owners with secure title is vital for economic growth and well-being. The foundation of the Torrens title system has been secured with indefeasible title which is central in the registration system. However, the increase of fraud cases and forgery incidents may dissolve the security of the title, hence the title owners will lose the trust and doubting the providences of security of title which was the original aim of Torrens title system. Additionally, this phenomena may lead to the insecurity behaviour of title owners when signing any deals for their land ownership (Lanjouw and Levy, 2003). Several well-known cases such as (i) Adorna Properties Sdn Bhd v Boonsom Bunyanit, (ii) landowners in Ulu Yam, Selangor, and (iii) 18 landowners in Kapar have destroyed the integrity of land title and the sanctity of property, leaving the original owners having no means to recover their own lands. This paper discusses the issues and challenges of fraud and forgery in land administration system. This is the biggest concern related to the registration of ownership which highly needs to be controlled.

2. LAND REGISTRATION SYSTEM

Land registration acts as a process of managing land tenure to improve the land registration system. The establishment of land information system is the basis of efficient human settlement development (Nichols, 1993). Besides, a successful registration system addresses the risks associated with imperfect information and protection, thus the system will support the security by targeting object, nature, and the holder of the right (Palmer, 1998). Along with these, UNECE (2005) also determined that the objective of land registration is to secure the owner's rights in acquisition and disposal. In other aspects, land registration also plays the role as a requirement in protecting the rights of property and agricultural type of development (Sikor, 2006).

Other than that, land registration system is a system that contains authorised and standardised procedure of land tenure information (Nichols, 1993). Childress (2011) claimed that the process of land registration is the formal recording of land rights which specifies the owner, owner's rights, and interests of the properties. Furthermore, land registration is official because the information is used as evidence of interests in land and systematic with policies, standards, and procedures in place to collect, validate, maintain, and provide access to the information (Nichols, 1993). Aside from this, the main functions of land registration system are to provide an institutional framework for land allocation and development, monitoring and regulating the land development process and providing land activities and attributes' information (Simpson, 1976). In short, based on the discussions above, it can be compressed that land registration is the basic system that holds official records caused by land development to secure the land owner's rights. In a nutshell, land ownership is the key attribute of land administration system. It reviews the juridical purpose for land registering is the relationship between land administration and land registration.

3. FRAUD AND FORGERY IN LAND REGISTRATION SYSTEM

Fraud includes theft, corruption, conspiracy, embezzlement, money laundering, bribery, and extortion (Hemraj, 2002). It also involves using deception to dishonestly make a personal gain for oneself or create a loss for another (Arowosaiye, 2012). Low (2008) defined fraud as activities involving some forms of deceit; where there is an act of deliberate dishonesty or an intention to deceive and that there is a loss suffered due to that deceit. Although the definitions vary, most definitions are based on one general theme which is “the intention to defraud others”. In Black Law’s dictionary which is the basic and fundamental principle of law, forgery or false is defined as;

“an essential element of forgery, where material alteration is not involved. Term has reference to manner in which writing is made or executed rather than to its substance or effect. A falsely made instrument is one that is fictitious, not genuine, or in some material particular something other than it purports to be and without regard to truth or falsity of facts stated therein.”

Nevertheless, the reasonable and acceptable definitions depend on the context of evidence and the degree to which the admissibility of the evidence is required. Furthermore, it is important to take note that fraud may exist in any forgery and falsification cases (Hadi *et al.*, 2015). The evidence of the possibility of fraud cases is reflected through the statistics reported by Department of Director General of Lands and Mines as illustrated in Figure 1.

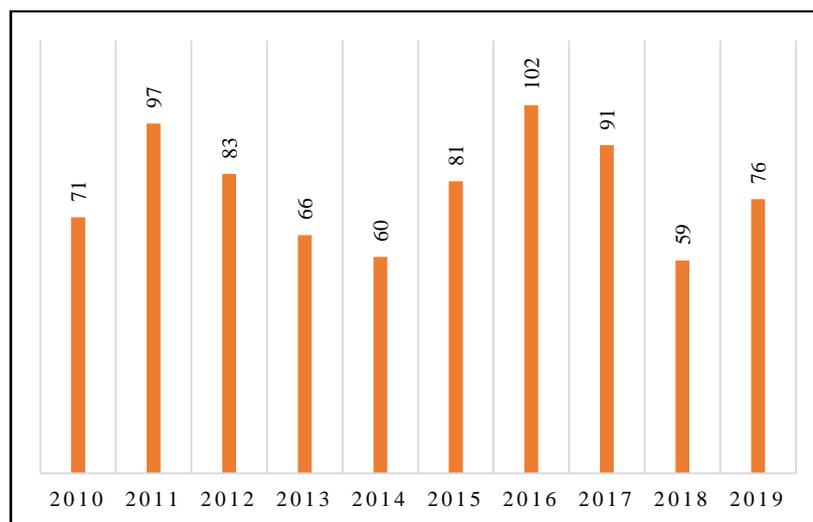


Figure 1: Statistics of Land Transfer Fraud Cases for the Year 2010 to 2019
Source: Department of Director General of Lands and Mines, 2020

Figure 1 shows the cases of land transfer fraud in Malaysia for the latest ten years from 2010 until 2019. From the total of 786 cases reported, Selangor has the highest fraud cases related to land transfer with 161 cases, followed by Sabah with 148 cases and Johor with 100 cases. Table 1 shows the statistics of land transfer fraud cases by states from year 2010 until 2019.

Table 1 Statistic of Land Transfer Fraud Cases by States from 2010 until 2019

State	Perlis	Kedah	Penang	Perak	Selangor	Kuala Lumpur	Negeri Sembilan	Melaka	Johor	Pahang	Terengganu	Kelantan	Sabah	Sarawak	Total
Total of Cases	2	50	31	45	161	35	39	24	100	39	19	42	148	51	786

Source: Department of Director General of Lands and Mines, 2020

In studies done by Low (2008), Maidin and Khadouf (2009), and Ismail (2011), they have identified the specific patterns of fraud land registration in Malaysia. Karim *et al.* (2010) described and categorized these patterns into five types as follows:

- i. Fraud by forgery – registering dealings using the Power of Attorney, forging of Transfer Form 14A or Charge Form 16A/B, misusing court order to register dealings illegally without verification of validity, forging the signature of the Power of Attorney, forging victim’s signature on a mortgage instrument, forging person either forgery executing or coercing execution of a transfer of the subject property to the forgery person’s wife/son/husband, or deceiving the registered owner to sign mortgage documents related to the subject property;
- ii. Fraud by misrepresentation – appointing or using unauthorized persons to execute the activities of ownership conveyance and fraud by false identity or impostor, or disguising as the registered owner and fraudulently arranging for a mortgage to be registered;
- iii. Fraud by alteration – issuing the replacement of title document under the pretext that the original title has lost by Land Office administrator and system administrator;
- iv. Fraud by cyber terrorist or programmer who co-operated with the system – create unnecessary problems in the computerised land registration system by an expert programmer; and
- v. Fraud by payment – falsification and using fake or stolen credit or debit card.

Through the discussion, any steps in the land administration process are exposed to the possibility of land fraudulent, along with the legal sanction provided through NLC 1965 which can still be penetrated as supported by (Ismail, 2011).

4. ISSUES AND CHALLENGES OF FRAUD AND FORGERY IN LAND REGISTRATION SYSTEM

Based on the discussion, this study has highlighted and identified the issues and challenges of fraud and forgery in land administration system which are limited power of registrar or land administrator, lack of expertise and resources, computerised land registration system security, lack of concern among legal practitioners and commissioners for oaths, and the abuse of power.

4.1 Limited power of Registrar or Land Administrator

The Registrar hold limited power in registering the land dealings (Wu and Kepli, 2010; IBP, 2017). His duties are limited to quality checking or auditing whether an instrument is “*fit for registration*” as prescribed in Section 301 of the National Land Code 1965 when the

instrument is “*provided with a certificate of sale that has been given to a purchaser in respect of any charged land or lease*”. It should also satisfy the following conditions:

- i. “*that it is one of the classes of instrument set out in sub-section (1) of section 292 as authorised to be so registered;*”
- ii. “*that it complies with:*
 - (a) *the provisions of Part Thirteen as to the form, content, execution and attestation of instruments of dealing generally, and the persons and bodies capable of taking thereunder, and*
 - (b) *the provisions of Parts Fourteen to Seventeen with respect to instruments of the particular class in question;*”
- iii. “*that the dealing which it effects is not contrary to any prohibition or limitation imposed by this Act or any other written law for the time being in force, or to any restriction in interest to which the land in question is for the time being subject;*”
- iv. “*that it does not declare or, except as permitted by section 344, disclose the existence of any trust; and*”
- v. “*that it is duly stamped in accordance with the provisions of the Stamp Act, 1949.*”

Based on the description above, as long as the instrument is “*fit for registration*”, the Registrar is duty-bound to register the dealing. He is not required to examine the instrument for fraud or improper dealings. The power of Registrar is administrative in nature; he may proceed with the registration if he is satisfied with the requirements and procedures complied by the applicant. However, as stated in Section 303 of the National Land Code 1965, this power is subject to certain limitations as follows:

- i. “*The Registrar needs not be concerned to enquire whether any transfer of a lease, sub-lease or a grant, constitutes a breach of any agreement against assignment of sub-letting.*”
- ii. “*In the case of a lease, sub-lease or surrender granted or accepted by a chargee in possession, the Registrar is not obliged to enquire whether the chargee was rightfully in possession.*”
- iii. “*The Registrar is also not concerned to enquire into the validity of any certificate of sale issued pursuant to a sale upon default of a charge.*”
- iv. “*Where a dealing is affected by a person registered as a trustee or representative, the Registrar is not concerned to enquire whether the dealing is consistent with or permitted by the trust instrument. He is under no obligation to make any enquiries or to seek further information even if he suspects that the transaction may be in breach of trust. However, where it has come to his knowledge that the transaction is in breach of trust, he must reject the instrument as being unfit for registration.*”

The Registrar is obligated to distribute or reject the complete/incomplete related documents and instruments. The power of Registrar is limited to correct the errors or oversights in the documents made by the registering authority. It is important to take note that the power does not apply in respect of land held under the Land Office title without getting the State Director approval. As what have been discussed before, the possibility of a dishonest employee still exists even in the slight chance and the falsification and forgery may possibly happen in the process even in the minimal situation.

4.2 *Lack of expertise and resources*

The Land Registry or Land Office employees are not exposed or specifically trained in detecting forgery cases in land dealings. This matter is impossible for they have no specific reason to doubt unless they are notified by the system or responsible party. The innovation of

thumbprint technology to perform the instrument of dealings instead of signature is a good mechanism that has been done by the country. Hemraj (2002) and Low (2008) argued that fraud may be committed by forging the execution of the individual or organization concerned with the transfer or development of an interest in a lot; or by forging an attorney's power. In this case, individual's signature on the land is forged; or the company's execution is forged; or the victim's signature on the power of attorney is forged.

Low (2008) posited that frauds involving the power of attorney can be committed in two possible ways, either (i) forging the victim's signature on the power of attorney and using that power of attorney to perpetrate the fraud, or ii) witnessing requirements for the power of attorney, for the power of attorney may be circumvented in the same manner as in forgery of signature on the land title instruments. Initially, when a document comes and presented with the power of attorney, the Land Registrar or land officer will check if the document is completed with the donor's signature, legally proven by the commissioners for oaths and registered with the court, the document will proceed to the approval unsuspectingly.

As a result, Low (2008), Kranacher and Riley (2019) concluded that since the most common method of execution is for the individual signature to appear on the instrument, one way of committing fraud is to target the individual signature by forging it. Accordingly, the fraudster may commit fraud of that kind because the applicable land title document for the victim of the fraud has particularly been obtained for the purpose of execution by him or her.

4.3 Computerised land registration system security

The existence of the internet as a global medium of communication through computer networks has also generated issues in the field of land administration, such as security and protection of property rights. The computerisation of land registration system is problematic in the sense that it provides avenues to those committing fraud. The vulnerability of security and stability of the register can be questioned because fraud and forgery exist wherever there is commercial activity. Furthermore, law-enforcement agencies consider it as ease of access (UNECE, 2011). In this case, provision needs to be made for the failings of technology to ensure that the registration system accuracy can be improved occasionally. In addition, the private agency appointed to assist the land registration department in computing the land title uses temporary staff who have kept the access code and use it to enter into fraudulent transactions. They might not recognize it as they are part-time appointees.

Other than that, there had been incident involving wiretapping in the Local Area Network of the Land Office. The incident involved connecting an unauthorized wireless access point to the network to enable remote access to the network. There have also been other cases involving another government system in which malicious program has been planted to allow unauthorized access and modification to data from remote locations. End user computers and server-side computers that are running windows operating system are prone to compromise by malicious software that are easily developed and deployed to target specific system. Therefore, the risk of fraud by compromising network and system could be reduced by ensuring more higher security has to be implemented, such as, data involving transactions related to registration records and particulars need to be encrypted at the application layer, the access to the Land Office facility need to be protected with sufficient access control, and the requirement of validation for contractors personnel to access the facility.

4.4 Lack of concern among legal practitioners and commissioners of oath

The practice of legal practitioners and commissioners for oaths attesting the signatures of parties without actually being present at the time of the party signing the conveyance documents can allow fraud to occur (Ismail, 2011). The National Land Code 1965 prescribes the use of Form 14A that affects the transfer of title or Form 16A/B for registering a charge.

The signature of the transferor or charger (especially for a third-party charge) can easily be forged without anyone realising it. It may go unnoticed to the registering authority, legal practitioners, and commissioner for oaths who may be witnessing signatures of parties without being present. A legal practitioner or commissioner for oaths can be cheated by an impostor using a forged identity card. Next, in any transactions affecting land be it a sale or a purchase or establishing an interest over land, it is important to confirm the identity of the parties involved in the transaction. However, in any of these possibilities, the legal practitioners and commissioners for oaths due to their heavy workload, at times rely on their clerks to verify the identity of the signatory. There is a clear instruction from the Malaysian Bar Council for legal practitioners and commissioners for oaths to be present at the time when conveyancing of other documents are executed. However, at times, the instruction is not complied with. The court in *Lau Teck San @ Lau Beng Cheng & 3 Ors v SK Song* held that an attesting solicitor would be liable for professional negligence and or breach of an implied warranty of authority in the event the transferor turns out to be an impostor. This helps to deter the busy practitioners from relying on their clerical staff to identify the person executing or preparing the documents.

4.5 *The abuse of power*

Based on cases reported by Department of Director General of Lands and Mines previously, the abuse of civil servant's power can happen among the land administrators, clerks, attorneys, or any land office employees. Referring to fraudulent of document cases, this type of fraud is normally done by a person who has access in executing documents or databases. Once accessed, the fraudulent individual can alter the information in the land title document or insert information if not altered. This individual can be the land office clerk, the system administrator who alters the system through "*backdoor*" mechanism, the contractors or vendors who perform data cleaning activities, among others. If the alteration through insertion is done in the manual system, such an alteration can go unnoticed by the registrar.

In addition, fraud within the land administration office is highly likely done offline or going through manual-based system, hence leading to undetectable or untraceable fraud cases and the individuals involved. However, it may have already been too late once detected. The perpetration of fraud in both manual and electronic environments can take various forms and by different individuals. The current system does not provide an efficient mechanism to protect against these frauds or, if any, based on the reported cases, such mechanism is still penetrable as opined by (Ismail, 2011). Besides, there is no assurance as to the best risk management strategies and mechanisms applied. While all these cases put the indefeasibility of title in concerned, the situation leaves plenty of room for the Land Offices to improve the security of land administration system. The resolution involves the investment in information technology through the implementation of the *e-Tanah* (electronic land administration system), the revision and modification of various processes and procedures in Land Offices, and, most importantly, the effort to study the potential revision of the National Land Code; couple of efforts in strengthening the present and potential implementation of the electronic land management system which require mutual understanding and participation. Therefore, the fraud and forgery cases can be controlled and reduced.

5. CONCLUSION

This study has identified and highlighted the current scenario, issues and challenges of land administration system in Malaysia. Thus far, the reports lodged to the Department of Director General of Lands and Mines show that most fraud cases occurred prior to land title registration. This can go undetected at the Land Registry or Land Office as the employee entrusted with the registration process is limited in power. Thus, lawyers and all other parties

entrusted with preparing documents in conveyancing practice must assume an important role in the contract and preregistration process to prevent fraud cases. In conclusion, the Malaysian system of land registration is structured, reliable, and provides specific guidelines. In this context, fraud and forgery cases can be avoided or reduced in the future if the Land Registry or Land Office workers are knowledgeable and well-trained and to detect the crimes. At the moment, there is a limited power by a Registrar who is obligated to approve and proceed with the registration after he ensures that the conditions are fulfilled and the dealings are in order. In this sense, an oversight over the granted documents may possibly happen and this task will most likely expand the power of Registrar. In short, a quality enhancement is crucial to be implemented in Malaysian land dealings registration system to protect the transparency of the Land Offices itself.

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