

A Review of Organizational Arrangements in Malaysia Land Administration System towards Good Governance: Issues and Challenges

Salfarina **SAMSUDIN**, Malaysia

Key words: land administration, good governance, organizational structure, decentralization

SUMMARY

Good governance is considered as one of the key pillars towards enabling sustainable development. In relation, spatial data infrastructures and good governance have significantly formed a great combination in ensuring successful services delivery to the society as well as achieving economic, social and environmental balance. Yet, most developing countries have been identified with serious weaknesses in governance approaches, particularly in land administration. The key indicators of good governance such as transparency, accountability, rule of the law, equity, participation, efficiency and effectiveness should be considered when evaluating the performance of land administration services delivery. Nevertheless, the practices of good governance may differ between countries although they share the same democratic system. Having understood the above key indicators, this paper further discusses organizational arrangements in Malaysia land administration system with the aim of assessing the extent to which the stakeholders' efforts have supported the key principles of good governance. However, even though most of them are interconnected and play integrative roles, this paper discusses only one of the key principles, namely harmonization. Focus will be on the aspects of organizational structures within the land administration reforms and further discussions will involve the issues and challenges in enhancing relationships and cooperation among land related stakeholders. The findings from this research will provide a conceptual framework for enhancing organizational arrangements in land administration system, especially in developing countries towards successful and sustainability of good governance.

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Salfarina SAMSUDIN, Malaysia

1. INTRODUCTION

Land administration is a complex process and every dimension requires both static and dynamic arrangement for achieving sustainable development. The primary function of land administration has been seen as to contribute to the proper management of land supply, taxation and information systems (Davies *et al.*, 2001). Most of the land policy, approaches and activities associated with land administration system are different among countries, although they do focus on the same basic function of the systematic organizing and official recording of land tenure (Cagdas and Stubkjaer, 2009). However, in recent decade, the land administration system requires an efficient and effective policy implementation in response to the social needs, economic development challenges, and global environmental issues. Given these pressures, best practice of land policies, land management and land reform is significantly important along with land administration as a basic infrastructure in providing information about land towards enabling sustainability.

Sustainability is a combination of many elements including capacity, budget, good governance, transparency and accountability, security of land from loss, destruction and fraud, and reliable and consistent delivery of services, government commitment and public confidence (Deininger, 2010). In the context of land administration, good governance notion potentially commences as a direction for sustainable development. Burns and Dalrymple (2008) discover that good governance in land administration is also the foundation for achieving good governance in the society as well. They opined that it relates with the primary function in delivering services for the society and organization. For that, towards successful good governance, land administration clearly needs commitment and participation from all the stakeholders involved (FAO, 2007). Obviously, the statement is in line with the good governance principles, which requires well organizational arrangements and public interventions in decision making process.

2. GOOD GOVERNANCE IN LAND ADMINISTRATION

Principally, governance means more than government; it includes decision making processes and policy implementation, involves participation from various stakeholders and, emphasizes on the whole range of relationships between formal and informal stakeholders. Most findings in land administration studies frequently suggest that land administration should be elevated by technical, social, economic and environmental awareness. Williamson *et al.* (2008) believe that land administration is fundamentally all about good governance and Jones (2010) further

highlights the important aspect of good governance is in providing an effective system of land administration, and this relatively relates with comprehensive land registration and titling.

2.1 Good governance versus weak governance

Although successful governance still remains invisible, Zakout *et al.* (2006) continue to promote the benefits of good governance particularly in land administration. They claim that good governance in land tenure and land registration will benefit in encouraging economic development, reducing poor in the society, protecting land and natural resources, enhancing public delivery and preventing conflicts on land. Furthermore, Pienaar (2009) believes that successful good governance approaches may contribute to solving of many issues and conflicts in land administration. In addition, Bell (2007) highlights almost the same benefits of good governance in land administration as raised by Zakaout *et al.* (2006). He agrees that good governance will contribute significantly to a country's economic growth, public confidence, environmental protection, pro poor support, state assets management, delivery of appropriate public services and conflict resolutions. Successful governance will benefit the achievement of MDGs and sustainability, food security, poverty improvement, respecting of human rights, and finally balancing the impact of climate change (Sewornu, 2010).

On the other hand, Ray (1999) uses the term of poor governance in describing the impact of unsuccessful or weaknesses of governance. According to him, the features of poor governance normally appear with unclear determination between public resources and private benefit, inappropriate policy and government services framework, excessive rules and regulations, ambiguous procedures, and finally inconsistent priorities for development. In addition, he approves that the governance weaknesses will lead to corruptions, encourage arbitrariness, discourage competitions, and cause misallocation of limited resources. Furthermore, Sewornu (2010) shows the impact of weak governance practices in the land sector. The weaknesses of governance practices will engage the nation with unsustainable social development (poverty, social exclusion and negative social behaviour), environmental degradation, constrains on economic development, reduce public incomes, insecurity of land tenure and failure of land market. In the same context, Williamson *et al.* (2008) provide some opinions on the impact of weak governance particularly in the land administration system. They claim that unsuccessful governance in land administration will lead to overlapping regulations, conflicting enforcement, creation of substandard within rules and regulations, and lacking of procedures and documents used.

In designing land administration development framework for developing countries, Torhonen (2004) agrees that land administration becomes unworkable when there is ambiguity in governance practices. Lack of policies, scattered organizations, abstract land management and informal administration will contribute to unsuccessful land administration. However, in examining whether a governance is good or bad, Olowu (2002) believes that it relatively depends on the quality of the rules which uphold the cooperation among various stakeholders to resolve social conflicts. Identification of issues of the quality of the rules along with

capacity of the organization and leadership skills will help the nation to determine the performance level of governance practices (Olowu, 2002). Therefore, good governance requires participation from various institutions and mostly recognizes government as a key player (FAO, 2007). For this reason, all stakeholders in governance practices must fully contribute their skills and competency in order to reach the qualities of the rules and thus, minimize the consequences in current land administration system.

2.2 Good governance indicators for land administration

Good governance and sustainable development needs sound land administration as well as sound land management. Land administration requires the setting of principles of good governance as a direction towards balancing social, economic and environmental issues. From previous studies in land administration and management, many researchers (Zakaout *et al.* (2006), Antonio (2006), and Pienaar (2009)) have listed the good governance indicators. Some of them had applied good governance indicators in examining the performance level of land administration system in specific countries. Effectiveness, efficiency, transparency, accountability, equity and participation are the mostly accepted good governance indicators for land administration. However, several other indicators have also been determined by the same researchers such as sustainability, accessibility, affordability, security and rule of the law. Grover *et al.* (2006) and Antonio (2010) have considered sustainability as an indicator in examining good governance for land administration.

One of the most popular studies on good governance in land administration have been done by Zakout *et al.* (2009). Collaborating with World Bank and FAO, Zakaout *et al.* (2006) come out with detail explanations about good governance in land administration. They develop a framework to highlight the principles and good practices in land administration. The study provides the good practices from several countries, as well as the overview of principles and key questions to be applied in the evaluation of governance approaches in land administration. Zakaout *et al.* (2006) highlight the principles of efficiency, effectiveness, transparency, consistency, predictability, integrity, accountability, subsidiarity, autonomy, depolitization, civic engagement, public participation, equity, fairness, impartiality, legal security and rule of the law as the important aspects in land administration. According to James Buchanan (2008) as cited by Wallace (2010), the indicators of good governance can be usefully clustered around three outcomes: responsibility, empowerment of people and delivery of an objective legal framework.

2.3 Conceptual frameworks for good governance in land administration

Ting and Williamson (2000) suggest that good governance and information about land must perform together as a foundation or bedrock to ensure appropriate land administration systems for enabling sustainable development. They capture the responsibility of both as illustrated in **Figure 1**.

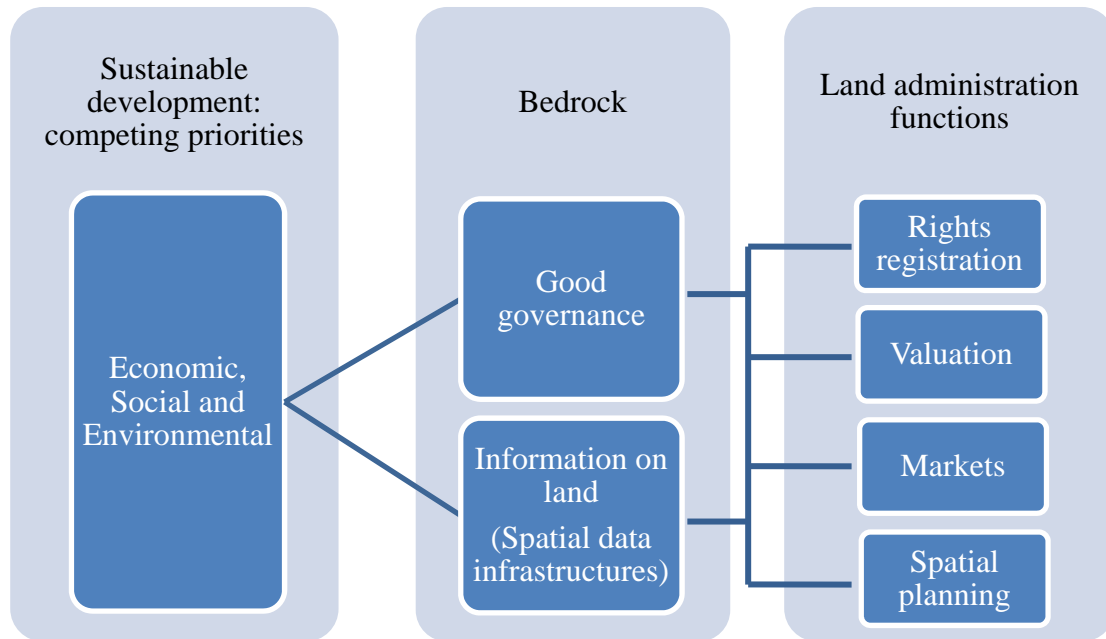


Figure 1: Integrated land administration for sustainable development
Source: Ting and Williamson (2000)

Referring to **Figure 1**, Ting and Williamson (2000) explain the position of good governance in between land administration and sustainable development. They find that good governance and information are supposed to be the foundation for the development of land administration components in order to reach sustainability. The success of land administration requires contribution from the governance as guide towards sustainable development. Therefore, in land administration, good governance principles must be clearly identified along with the infrastructure for proper management of land information in order to build a sound foundation for balancing competing priorities towards sustainable development.

In developing a direction and strategy towards good governance in land administration, detailed information about land administration institutional arrangements must be clearly defined within the issues and main constrains (Burns and Dalrymple (2008)). Therefore, Burns and Dalrymple (2008) developed a model for improving the implementation of good governance in land administration as shown in **Figure 2**. The model is based on the global governance framework.

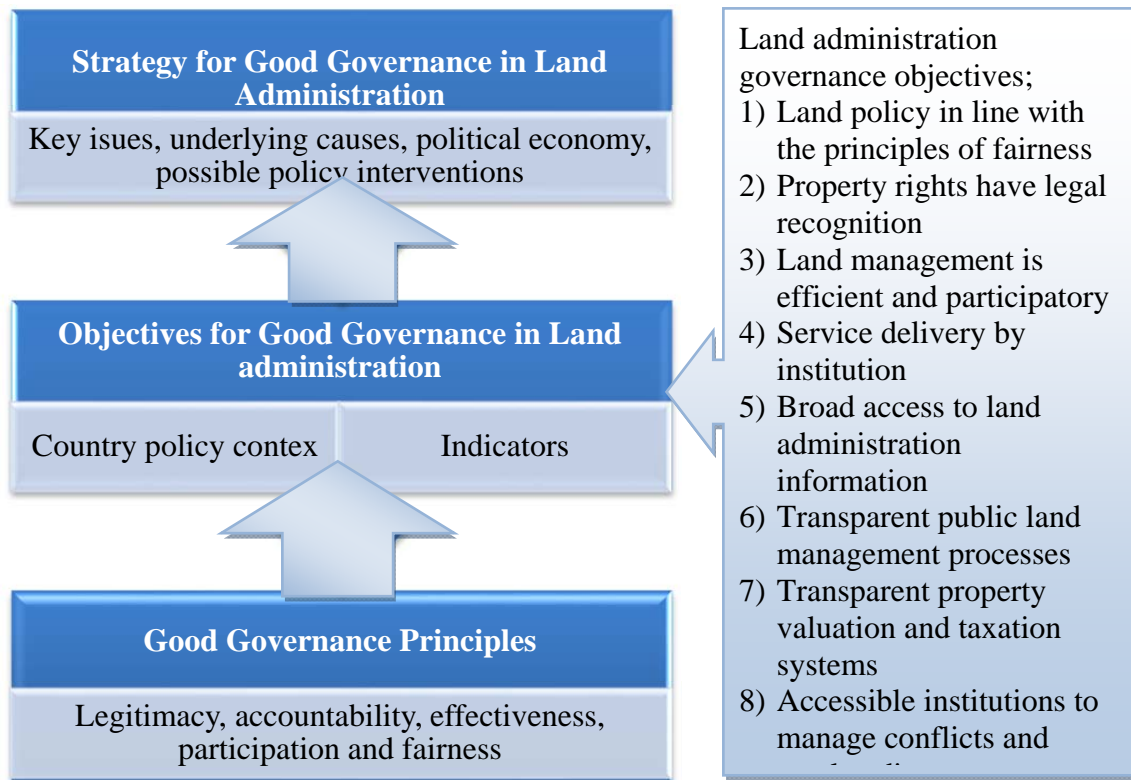


Figure 2: Model for improving the implementation of good governance in land administration
Source: Burns and Dalrymple (2008)

Figure 2 shows that the model posits three variables which shape the linkage between principles determination, objectives identification, and finally strategy development. Starting with good governance principles, responsible stakeholders must set up their own objectives within the country policy contexts, and thus continuously develop indicators as guides towards achieving the objectives. Then, in order to reach the objectives, appropriate strategies must be developed within the encountered key issues, underlying causes, political and economic background and possible policy intervention.

Therefore, in improving governance in land administration, stakeholders must look into account several aspects which can influence the level of performance. According to *Bandeira et al.* (2010), in order to evaluate a system we must commence with defining its expected results (objectives) as well as the tools (include strategy and infrastructure) available to reach the objectives set up. The suggestion is in line with the Burns and Dalrymples' Model as seen in **Figure 2**. In summary, to ensure that land administration system is well managed under the governance principles, governments and non governments have to collaborate throughout the policy process.

Several other researchers also recognize the importance of structured work including the need to indentify the objectives, as well as develop indicators and strategy as described in the

Burns and Dalrymples' Model. For example, in examining the performance of good governance in land administration, Mitchell *et al.* (2008) has highlighted a few indicators that can measure the performance of governance and effective institutions for land administration projects. However, they then comment that evaluation measures are often too vague to provide a clear picture of the effectiveness of the project across a range of aspects of the project. Many of these involve indicators that are difficult to measure and some provide quantifiable indicators that seem to have an arbitrarily derived number (Mitchell *et al.*, 2008).

2.4 The issues and challenges of addressing good governance in land administration

Towards enabling sustainable development, good governance is accepted as one of the key elements to minimize the conditions of economic, social and environmental imbalance. Enemark (2007), expresses that the aim for sustainable development may be unsuccessful if institutions in land administration and management are poorly organised.

Good governance and sustainable development needs sound land administration as well as sound land management. However, many developing countries are characterized with serious weaknesses in governance implementation (Deininger and Feder, 2009). FIG (2010) concludes that, in the context of land administration system, this situation happens in developed countries as well. Recently, land administration deals with the issues of institutional arrangements and limited capability to move towards effective and efficient land governance. Most of the land administration institutional arrangements are covered with issues of unclear framework for land governance and sometimes, more crucially, there is no clear objective and strategy towards good governance in land administration (FIG, 2010).

In discussing the challenges towards good governance, Deininger *et al.* (2010) define the reasons why it is still difficult for land administration to comply with good governance requirements. They highlight that the reasons are related with the technical complexity, political sensitivity, and finally the nature of land tenure arrangements. Land administration itself is technically complex and involves connections with many disciplines, such as economics, law, information technology, surveying, social and political sciences. Sometimes, land administration also has to deal with the different approaches of land tenure systems. There are some countries that still have to manage multiple systems while under a single territory (Olima and Obala, 1999; Payne, 2001; Torhonen, 2004; and Nzioki *et al.*, 2009).

According to Torhonen (2004), in most developing countries for instance, they have to manage various types of land tenure. In Kenya, for example, Olima and Obala (1999) indentified that there are four existing systems of land tenure controlled by different organizations; including customary or trust land, private leasehold or freehold land, unalienated government land and non formal de facto tenure. While in Ghana, according to Domfeh (2004), there are different types of land tenure practices that govern the holding, acquisition, use and disposal of land, which vary from region to region and between ethnic communities.

The practices of good governance may differ between countries although they implement the same system of democratic practices (Yaghi, 2008). In land administration system, Payne (2001) assumes that the differences will contribute to unclear framework towards good governance. In his study, Payne (2001) addresses the major issues why good governance in land administration still continues as a notion. He highlights the complication occurs when there are often different systems of legislation and forms of tenure relating to land co-existing in the same country. Sometimes, this situation happens even within the same city, or between the urban and rural area (Payne, 2001). In South Asia, particularly in rural areas, Jones (2010) identifies three sets of factors that will help explain the difficulties and slowness in registering of land titles. The factors relate with poor standards of governance, the nature of traditional peasant community, and finally the bureaucracy within policy process.

Therefore, land administration must continuously improve by recognising and considering various aspects of social, economic and land related problems (Williamson and Ting, 2001). Pienaar (2009) highlights that land administration should involve aspects of equal protection, land policy principles, land tenure principles, land registration principles, spatial data and technical principles and institutional principles for best practices towards proper land management (Pienaar, 2009). In addition, Torhonen (2004) concludes that workable land administration is built upon good governance, appropriate resources, cultural sensitivity, equity, quality and commitment.

In summary, although different countries have different land administration systems, governance practices must be allocated as one of the priority areas. There are various guides that governments can use in order to turn the notion of governance into reality approaches. Therefore, there is no reason for the government to ignore the importance of good governance in the policy development process. The willingness of the government to be the coordinator in implementing governance, particularly in land administration will benefit the whole institutional structure.

The next section provides a brief contextual description of the land administration system in Malaysia (Peninsular Malaysia, Sarawak and Sabah). The issues and challenges of implementing good governance, especially with respect to stakeholder participation will also be discussed. The discussion will be covered along with the best practices of organizational arrangements for land administration, forwarded by Williamson (2001), Burns *et al.* (2006) and Deininger *et al.* (2008).

3. LAND ADMINISTRATION SYSTEM IN MALAYSIA

The Federation of Malaysia comprises Peninsular Malaysia in the East and the states of Sabah and Sarawak on the island of Borneo at the West side. In land administration contexts, the right of the individual to own property, including land, is safeguarded under the Federal Constitution (Salleh, 2010). Under the Federal Constitution, land is administered by the State

Authority, although the Federal Government plays a very important role in legislating land matters. Since it is a state matter, according to Azimuddin (2008), there are still differences over state land policies implementation. The kind of situation provides further challenges in the forming of uniform land policies to be practiced by the different states (Azimuddin, 2008).

3.1 Land Administration in Peninsular Malaysia

Peninsular Malaysia consists of a federation of states in which each state is responsible for its own land issues. All states operate the Torrens system of registration, administered by the State District Office and coordinated by the State Department of Land and Mines. Although, land is state matter, on behalf of Federal Government, the position of Director General of Lands and Mines was created as the coordinator of land administration between the federal government and state governments (Anesh, 2010). Land administration in Peninsular Malaysia is governed by the National Land Code 1965 (Act 56) which was created to provide a consolidated legislation in the aspects of land tenure and registration, land transfer, leases, charges, easement and other rights of alienation and development of land (Mohd Shukri & Anesh, 2010). However, Section 14 of the National Land Code provides for the State governments to draw up individual State Land Rules. These Rules outline the various procedures pertaining to land in the particular State and have to be in conformity with the National Land Code.

3.2 Land Administration in Sarawak

Sarawak Land and Survey Department is a multi-functional organization under the State Ministry of Planning and Resource Management and the core businesses of the Department are survey, land (including land registry), planning and valuation (Sudarsono, 2010). The strength of the land administration organizational structure in Sarawak lies in the functional collaboration, sharing and coordination between surveying and mapping; the cadastre; land registry; the valuation; and town and country planning sections within the same organization. Land policy in Sarawak was successively evolved by the Brooke family which introduced the Torrens system of land registration into Sarawak through various Land Orders. Land law in Sarawak today is governed by the Land Code Chapter 81 (Government Printer, 1958).

3.3 Land Administration in Sabah

Land administration organizational structure in Sabah share almost the same structure as Sarawak. All matters pertaining to land registration, administration of cadastral survey and valuations of land premium in Sabah are entrusted to Lands and Surveys Department headed by the Director of Lands and Surveys. The Lands and Surveys Department is under the portfolio of the Chief Minister's Department through the office of the Secretary of Natural Resources. In Sabah, the Sabah Land Ordinance Chapter 68 (Government Printer, 1930)

provides the framework for land policy. It is also based on the Torrens system of land registration.

4. ISSUES AND CHALLENGES IN MALAYSIA LAND ADMINISTRATION SYSTEM TOWARDS GOOD GOVERNANCE

Public organizations in Malaysia have faced widespread criticism regarding their perceived lack of financial discipline, good governance and accountability (Siti Nabihah, 2010). This situation which also occurred in the land administration system in Malaysia is often associated with the lack of effectiveness in the public delivery system and governance weaknesses. In order to solve all the issues and face the challenges in land administration, we have to empower the land administration towards best practices through efficient and effective strategies. In developing the best practices in land administration, there are three key factors that should be considered as mentioned by Williamson (2010). The three key points refer to the stakeholders, any constraints that are affected and, specific choice of strategies adopted. In order to achieve best practices in land administration, we have to understand those particular principles and suitable options for policy improvement.

The organizational aspect is mostly recognized as one of the key principles of successful land administration. Towards best practices in land administration, Williamson (2001), Burns *et al.* (2006) and Deininger *et al.* (2008) recognize the necessity of successful organizational structure and practices in land administration functions. They highlight the importance of organizational arrangements towards good governance through the setting of decentralization approaches, building intergovernmental and interorganizational coordination, integrating policy development and encouraging private and community participation.

4.1 Decentralization

In discussing land administration and management organizations, Williamson (2001) and Burns *et al.* (2010) highlight the importance of the decentralization approaches. Decentralization relates with governance notions, and Enemark (2001) states that global approach to land management recently depends on appropriate structures of governance. FIG (2008) determines that the land administration system is often correlated with decentralization. According to them, in land policy process and implementation, it is more efficient and effective if administration and management tasks are allocated at the appropriate local level of government (FAO & FIG, 2008). Therefore, more international organizations, such as UNHCS, have increased their support for the decentralization of land administration to local governments, NGOs and communities especially in developing countries.

Land administration system in Malaysia has undergone many changes since it was started, either in the states of Peninsular Malaysia or Sabah and Sarawak. Starting with a system based on manual transaction, now it has started to change to a more efficient service delivery

system. In land administration system, Malaysia as a federation of states, maintains the decentralization approaches since it was implemented (Mohd Shukri, 2010). However, the forms of decentralization are different between in the states of Peninsular Malaysia and East Malaysia (Sarawak and Sabah). In Peninsular Malaysia, most of the State Governments have been practiced by partly of deconcentration and devolution forms. In contrast, Sarawak and Sabah are performed decentralization system within devolution forms in administration and management on land tenure, value, use and development.

4.2 Intergovernmental and interorganizational coordination

Current policies call for new forms of integration, co-operation and government involvement, based on new ideas in public administration such as network management (Gerlings and Stead, 2003). Nevertheless, the Deiningers's *et al.* Model suggests alternative which refers to the development of coordination structure between all the stakeholders particularly in the policy process. In the policy process networks, concrete mechanisms should be provided to promote and sustain coordination within existing land administration and management organizations. However, Nnaemeka (2009) highlights problems that relate with the absence of mechanisms for inter-sectoral functions coordination in policy formulation, program implementation and monitoring. Duplications of responsibilities between institutions and many land development agencies also exist due to lack of consultative co-ordination and co-operation.

In Malaysia, the lack of coordination between various levels of government has been pointed out by Slater and Vaez (2006) as the major issues in land administration. The issues surrounding the lack of coordination between levels of government are the different land administration organization between Peninsular Malaysia and East Malaysia. Therefore, in order to improve the organizational structure of land administration at the state level, by placing them under the control and supervision of the State Director of Lands and Mines (Azimuddin, 2008). Otherwise, Slater and Vaez (2006) suggest by integrating responsibilities for cadastral surveying and mapping and land administration into one state department, such as those already in existence in Sabah and Sarawak.

4.3 Formation of a single organization

Towards best practices in land administration, Williamson (2001) and Deiningers's *et al.* (2006) suggest considering the potential of combining various land management related departments into one government agency. While for land administration organizations, Williamson (2001) and Deininger *et al.* (2009) also suggest the integration of all land administration related activities under one government agency. Overall, Deininger *et al.* (2009) express a similar view that successful land administration may require the formation of a single land administration agency. The right combination is seen as one of the alternatives

to reduce various conflicts especially in terms of overlapping functions and minimizing the cost of the operation.

In Malaysia, this system is already implemented in Sarawak and Sabah where all responsibilities in relation to the land are put under the same administration. In Sarawak and Sabah, land administration and management relating to cadastral surveys, land tenure, valuation and planning is placed under the same administration. In this case, land administration functions of each state (Sarawak and Sabah) are held by the same person, namely Director of Land and Survey. This provides more transparency and helps expedite matters relating to land, as all activities are under the same administrative responsibility.

However, this situation does not occur in Peninsular Malaysia as planning, valuation and cadastral surveys are separated from the registration system. Land administration is administered by the State District Land Office and coordinated by the State Department of Land and Mines, while controlling of the cadastral surveys is the responsibility of the Department of Survey and Mapping Malaysia, which is a Federal Department (Mohd Shukri, 2010). Alternatively, valuation and planning services are allocated under the Federal Department, but undertaken by different Ministry, which is the Valuation and Property Services Department under the Ministry of Finance, while, Town and Country Planning Department under the Ministry of Housing and Local Government.

4.4 Private and Community Participation

The Williamson's Model has drawn attention to the importance of relationships between the government, private sectors and professional organizations. In relation to multi-participation, Deininger *et al.* (2009) suggest developing an effective framework specifically for private sectors' involvement in land administration services. In this case, Nabangchang *et al.* (2008) point out the importance of multi-participation in order to reduce overlapping functions between organizations. It benefits for the improvement of cost-effectiveness and minimizes state expenditure, and thus contributes to more advantages for the local society.

Public participation is the process by which the public concerns, needs and values are incorporated into governmental and corporate decision making. The aim of participatory activities is to let people involve in the decision making process (Dasimah & Oliver, 2009). On the other hand, public participation in Malaysia Land Administration System is rather limited especially in policy development. Public participation in land management in Malaysia is still not widespread and seen as the responsibility of governments to their people.

5. DISCUSSION AND CONCLUSION

Modern land administration theory requires implementation of the land management paradigm to drive systems dealing with land rights, restrictions and responsibilities to support sustainable development (Williamson *et al.*, 2010). The day to day operation and management

of the four land administration elements involve national agencies, regional and local authorities, and the private sectors, for instance, in terms of surveying and mapping. Therefore, the aspects of decentralization, collaboration and coordination among stakeholders, formation of single organization, and public participation should be given full attention in developing a strong and competitive organizational administrative system. The discussion of the Malaysian situation in this paper exemplifies some major administrative difficulties in undertaking effective and efficient land administration. Therefore, Malaysia land administration system requires enhancing organizational arrangements towards successful and sustainability of good governance.

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BIOGRAPHICAL NOTES

Salfarina Samsudin is presently a Postgraduate Research Student at the Faculty of Art, Design and the Built Environment at the University of Ulster. Her research discovers organizational arrangements for good governance in land administration.

CONTACTS

Salfarina Samsudin
Postgraduate Research Student
University of Ulster
Jordanstown Campus, Shore Road
Co Antrim Northern Ireland
United Kingdom
Email: s-samsudin@ulster.ac.uk