



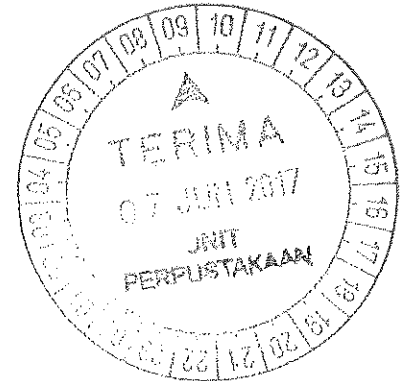
HBM/1/6

6 Jun 2017

Semua Hakim Mahkamah Tinggi / Pesuruhjaya Kehakiman
Mahkamah Tinggi Malaya

Semua Timbalan Pendaftar / Penolong Kanan Pendaftar
Mahkamah Tinggi Malaya

YA Datuk/Dato'/Datin/Tuan/Puan,



ARAHAN AMALAN HAKIM BESAR MALAYA BIL. 1 TAHUN 2017

**PENGENDALIAN KES-KES PENGAMBILAN TANAH DI BAWAH AKTA
PENGAMBILAN TANAH 1960 (AKTA 486) BERIKUTAN PENGHAKIMAN
MAHKAMAH PERSEKUTUAN DALAM KES SEMENYIH JAYA SDN BHD**

Setelah berunding dengan YAA Ketua Hakim Negara, saya dengan ini mengeluarkan arahan seperti yang dihuraikan selepas ini.

- [1] Pada 20.4.2017, dalam kes Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat [Dalam Mahkamah Persekutuan Malaysia (Bidang kuasa Rayuan) Rayuan Sivil No. 01(f)-47-11/2013 (B), dan kes Amitabha Guha dan Parul Rani Paul v. Pentadbir Tanah Daerah Hulu Langat [Dalam Mahkamah Persekutuan Malaysia (Bidang kuasa Rayuan) Rayuan Sivil No. 06-3-05/2013 (B) (kes Semenyih Jaya Sdn Bhd), Mahkamah Persekutuan antara lainnya telah memutuskan bahawa seksyen 40D Akta Pengambilan Tanah 1960 (Akta 486) adalah *ultra vires* Perlembagaan Persekutuan dan hendaklah dibatalkan (*struck down*).

- [2] Mahkamah Persekutuan memutuskan bahawa hanya Hakim sendiri yang berkuasa untuk memutuskan soal amaun pampasan selepas mengambil kira kesemua persoalan dalam kes di hadapannya. Sehubungan itu, Mahkamah Persekutuan mengarahkan bahawa:

“120. It is then for the judge and the judge alone to deliberate on the issue of quantum before him, after taking into account all the issues.

121. In so doing, it is not uncommon for the judge to give weight to the opinion of the assessors, for as experts in valuation of property, their opinion stand persuasively to be considered by the judge.

122. However the assessors have no more role as soon as they put their opinion in writing. At the risk of tedium, it bears repeating that it is for the judge and the judge alone to exercise his mind and determine the issues before him, based on the advice given him by the assessors.

123. It is reiterated that the opinion of the assessors are not binding on the judge. In the event the assessors disagree (as between themselves regarding the amount of compensation to be awarded in a particular case), the judge may, after considering both opinions, elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. However he is not bound by either one of the opinions. Should the judge finds himself in disagreement with the opinion of both the assessors, he is at liberty to decide the matter, giving his reasons for so doing.

These then are to be made clear in place in the proposed new section 40D.”

[3] Mahkamah Persekutuan memutuskan bahawa:

“all proceedings involving compensation in land acquisition matters which had taken place and been determined under this provision prior to the date of this judgment will remain status quo.”

[4] Mahkamah Persekutuan juga memutuskan bahawa perisytiharannya mengenai seksyen 40D Akta 486 adalah terpakai bagi kes-kes yang masih belum diputuskan di Mahkamah Tinggi atau di peringkat rayuan:

“Such a declaration will bind pending cases at first instance or at the appellate stage.”

[5] Dalam perintah di akhir penghakimannya dalam kes tersebut, Mahkamah Persekutuan memerintahkan seperti yang berikut:

“a. By section 40A, the matters are to be heard before a single Judge. Court shall appoint two assessors to assist the Judge in determining the objection made by the Appellants against the amount of compensation awarded by the Land Administrator.

b. At the end of the proceedings, the assessors are required to give their opinions in writing as to the appropriate amount of compensation to be awarded in this case pursuant to section 40C of the Act. The assessors must give due consideration

to all the heads of compensation claimed by the Appellant under the Act.

- c. The opinion of the assessors are to be recorded by the Judge. The judge has a duty to consider both of the opinions of the assessors. The judge is to exercise his mind in determining the amount of compensation to be awarded to the Appellant, based on the principle of equivalence.*
- d. The provisions of subsection 36(4) of the Act are to be given full effect. The judge shall not be bound to conform to the opinions of the assessors. In the event of any disagreement between the assessors with regard to the amount of compensation, the judge may elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. The judge is also at liberty to depart from the opinion of either of the assessors and decide on the reasonable amount of compensation to be awarded to the Appellant by giving reasons for so doing.”*

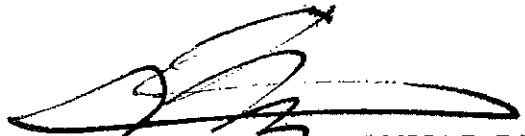
[6] Selaras dengan keputusan itu, bagi semua kes yang belum diputuskan dalam kes rujukan ke Mahkamah (*reference to Court*) berikutan pengambilan tanah, tatacara yang berikut hendaklah dipatuhi oleh setiap YA Hakim:

- (1) Apabila bantahan di hadapan Mahkamah adalah mengenai amaun pampasan, Mahkamah hendaklah melantik dua orang pengapit (assessors) untuk membantu Hakim dalam mempertimbangkan bantahan tentang amaun pampasan yang diawardkan oleh Pentadbir Tanah.

- (2) Di akhir prosiding, menurut seksyen 40C Akta 486, kedua-dua pengapit tersebut dikehendaki menyatakan pendapat mereka secara bertulis mengenai amaun pampasan yang difikirkan sesuai untuk diawardkan. Kedua-dua pengapit tersebut hendaklah memberi pertimbangan kepada semua jenis (*all heads*) pampasan yang dituntut oleh Perayu selaras dengan peruntukan Akta 486.
- (3) Pandangan pengapit hendaklah direkodkan oleh Hakim. Hakim bertanggungjawab untuk menimbangkan pandangan kedua-dua pengapit. Hakim hendaklah membuat pertimbangannya sendiri (*exercise his mind*) dalam menentukan amaun pampasan yang wajar diawardkan berdasarkan peruntukan Akta 486.
- (4) Peruntukan subseksyen 36(4) Akta 486 hendaklah dipatuhi sepenuhnya. Hakim tidak terikat untuk bersetuju dengan pandangan-pandangan pengapit. Jika wujud perbezaan pendapat antara pengapit-pengapit, Hakim boleh memilih untuk menimbangkan pandangan pengapit yang pada hematnya lebih sesuai dalam keadaan kes itu. Hakim juga bebas untuk tidak menyetujui pandangan mana-mana pengapit, dan berkuasa untuk memutuskan amaun pampasan munasabah yang wajar diawardkan kepada perayu dengan menyatakan sebab-sebab dia berbuat demikian dalam penghakiman bertulisnya.

[7] Untuk mengelakkan sebarang kesangsian, YA Hakim/Pesuruhjaya Kehakiman hendaklah membaca penghakiman Mahkamah Persekutuan dalam kes *Semenyih Jaya Sdn Bhd*.

[8] Arahan ini berkuat kuasa serta-merta.



(TAN SRI DATUK WIRA AHMAD BIN HAJI MAAROP)
Hakim Besar Malaya

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