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LAND REGISTRATION INNOVATION AND DECENTRALISED ADMINISTRATIVE REFORM: SUCCESS STORIES FROM THE STATE OF JOHOR, MALAYSIA

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Abstract

Land title is the evidence of ownership on land. The purpose of registration is to recognise property rights, which includes information pertaining to land area, location, boundaries, as well as ownership and title of immovable property. However, interestingly in Malaysia, cadastral survey is a responsibility of the federal government but land is exclusively a state matter. Since it is a state matter, there are differences over state land policies implementation on the process of registration. The kind of situation provides further challenges in the forming of uniform land policies to be practiced by the different states. This paper will discuss the innovations and reform of land registration and administrative in Malaysia, lesson learned from the State of Johor. It is include the successful and challenges on law and regulation implementation, accrual practices and reform experiences, decentralised organizational arrangements and harmonization, and new technology and computerisation adoption.

Key Words: *Land Title, Land Ownership, Land Registration*

1.0 INTRODUCTION

Land demand is increasing due to the rapid growth of economic, social, and infrastructure developments. Various requirements for securing the interest of proprietors have increased the demand on land registration. The evolution of ownership registration has started in the 12th century, with Germanic Law being one of the earlier sources of law addressing real estate registration (Hongping Lian, Youbin, 2016). The urban record booklet for land property right transfer is a proof that Germany is the first country to establish the formal registration approach. According to the Germanic Law, land transfer does not only require a contract and mutual agreement between two parties, but instead, it encompasses the documents that record the transfer of the land property rights as evidence. Since this establishment in Germany, the ideology of registration of ownership began to spread in Western countries. In the early 20th century, Germany, Switzerland, the United States, and the United Kingdom introduced specific laws for land registration system (Gao Fuping, 2011)

Nowadays, land registration system has become an international trend in land administration³. In particular, land registration is deemed to be vital in overcoming the issues related to ownership. Nonetheless, different countries may execute different applications of land registration system as the components are systematised according to the specific techniques in each country that are influenced by its demographic and judicial system. In Malaysia, land registration is influenced by the Torrens system. Particularly, land registration system is implemented throughout the nation in order to ensure the rights and restrictions on land. As stated in Schedule 9 of the Federal Constitution of Malaysia, land matters fall under the state list, meaning that land is administrated inclusively by the state government. Therefore, although the Federal Government through Article 76 (4) of the Federal Constitution play a very important role in legislating land policy, there are still differences over state land policy implementation because of the power given to the state government on land matters (Bahari, 2006). Given these points, state governments have authority on land matters to ensure that land policy in respective jurisdiction properly implemented within their own inclusive contexts.

State Government in the country is responsible to manage land parcels which are legally registered and surveyed. Land law and administration in Malaysia are governed by the National Land Code (NLC) 1965, which applies to the Peninsular Malaysia. A uniform system emerged which respect to land tenure, registration of title, transfer of land, leases and charges, easements, and other rights and interests in land. In Section 14, NLC 1965 stated that State Government have right to develop specific State Land Rules. The rules drawn up by the State Government normally includes the various procedures of land transfer, quit rent charges, conversion, subdivision, and amalgamation fees in that particular state. Accordingly, Johor State

Government has taken into account practical issues in its effort to create a strategic approach for the land registration system, and has carried out several innovations on its land registration system.

2.0 LAND REGISTRATION

Land registration system is defined as any public system of records concerning legal rights to land (Michael Roth et.al 1989). The system has been widely established in Western countries, with three types of land registration approach: contract registration, rights registration, and Torrens registration (Hongping Lian, You bin, 2016). The contract registration is applied in the United States, while Russia adopts the rights registration, and the land registration systems in Australia and Canada present the features of Torrens registration. Notably, Australia is one of the earliest countries that established land registration systems. Accordingly, the country has a profound influence on its surrounding south eastern Asian countries including, Malaysia.

An effective and flawless land registration system has great significance in the political, economic, cultural, and social developments of a country. Land registration systems encompass two categories, namely the registration of deeds and registration of title (Rood J.R, 1914). A comparison between these two categories is explained briefly in Figure 1. Registration of deeds involves registering or recording of documents affecting interests in land. Particularly, it was established to prevent double selling of land (S. Rowton Simpson, 1976). Meanwhile, the second system, registration of title, was introduced by Sir Robert Torrens in 1858 (Patton, R.G, 1934). Torrens believed that a land register should show the actual state of ownership, rather than just provide evidence of ownership. Under this system, the government guarantees all rights shown in the land register.

The process of managing land tenure serves to improve the land registration systems, while the establishment of information systems related to land acts as the basis for the development of efficient human settlements. Successful registration system addresses the risks associated with imperfect information and protection. It organises the characters and transfer of property rights in land administration. Furthermore, the registration system supports the security by targeting the object, nature, and holder of the right. The title registration system records the ownership and other interests in real property, thus, it contains information on the land plot location, boundaries, owner, and title of the immovable property. It provides protection to those who hold the rights to the registered property that can be used as collateral for borrowed capital. Apart from protecting the rights of property, land registration is also a requirement for agricultural development.

On the whole, the process of land registration records the land rights through official records which specify the owner, rights, and interests of the properties (Feder, G. Nishio, A, 1998). Land registration system covers authorised and standardised procedure of land tenure information. It is official because the information is used as evidence of interests in land and is systematic with policies, standards, and procedures in place to collect, validate, maintain, and provide access to the information. Besides, land registration system mainly functions to provide an institutional framework for land allocation and development, monitoring and regulating the land development process, and providing land activities and information on attributes. In brief, land registration is the basic system holding official records of land development that secure the land owners' rights.

3.0 LAND REGISTRATION IN MALAYSIA

Land title is a key, comprehensive instrument in decision-making process for elevating the economy, environment, and social aspect. The main land registration statute in Malaysia is the NLC 1965 which is influenced by the Torrens system. The two main attributes in the statute are information related to the land that would interest a potential stakeholder should be revealed and registration is an important evidence to prove the registered owner (Patton, R. G, 1934). The Torrens system guarantees that the person shown on the title displayed in a land register is the right proprietor.

Land title is the evidence of ownership on land. Originally, the title contains two information, i.e. who the proprietor is and which land they own. Besides that, according to NLC 1965, there is also other information contained for a particular purpose, for example, the annual quit rent amount, the conditions and the restrictions imposed are intended to remind the proprietor about the things that can and cannot be done. Not all conditions and restrictions are imposed in the title because there are conditions and restrictions stipulated in the law. Any matter related to the transfer, lease, charge, and easement in the case of death can show and identify the proprietor and stakeholders at that time. In addition, caveat, restriction, forfeiture, acquisition or other information are necessary to be included in land title as notifications to third parties.

There are two main types of title i.e qualified title and final title. In land registration, land is identified through a survey reference (e.g., lot number, sub-district, and district). Land is surveyed under land law and it is shown on a certified plan before the final title is registered. The certified plans are prepared and certified by the Director of JUPEM. The recognised certified plan then is transferred to the final title form. Qualified title will be issued while waiting for the final title. Qualified title has the similar rights (as referred to in section 92 of NLC 1965) as in final title except land held under qualified title cannot be subdivided, partitioned and amalgamated. Land boundary under qualified title is provisional unless specified with

previous measurements. Qualified title will enable the proprietor to make land dealings such as transfer, charges or lease before the final survey is completed.

In Malaysia, land registration system has evolved from being manually conducted to computerisation (Abdullah, N.L Ramly, R, & Ikhsan.M.I (2017). In Peninsular Malaysia, the evolution of land registration process is evident through the electronic land administration system employed by the respective jurisdictions. Figure 2 shows the five stages of evolution of the land administration system from a technology perspective. The first stage acknowledges the history of land title registration which started with manual handling via maps and hard copy indexes. In the period starting from 1995 to 2001, all states in Peninsular Malaysia had started to implement the computerised system for all land registrations. The transition of land registration from manual handling to computerisation is a shift paradigm in the field of land administration. One of the most essential security features of computerised land administration system is controlling access to the system. After computerisation had been applied for land registration, land registration online system began to revolutionise.

4.0 LAND REGISTRATION IN JOHOR

Johor is one of the fastest developing and most advanced states in Malaysia. It is the second biggest state in Peninsular Malaysia and is bordered by Melaka, Negeri Sembilan, Pahang, and Singapore. The strategic location of Johor in the international trade route has driven its economy in the 17th century. Nowadays, Johor's progression is not only manifested in terms of economy, but in a wider context, for instance, in the aspect of its land administration system. Administratively, the decentralised land administration governance in the state of Johor shares many similar features with other Unfederated States in Peninsular Malaysia. Referring to the framework of federalism, it is clearly stated in the Malaysian constitution that land is a matter relating to state authority. It seems perform to the state of Johor when referred to the role and responsibility in administrating and managing land activities in their jurisdiction whereby in the state of Johor, it has been assigned to the Land and Mines Department. Despite it being a state matter, the federal government only assists in order to ensure the proper land management within the country through federal state agencies such as the Department of Director General of Land and Mines, Department of Surveying and Mapping, Department of Valuation and Assets Management and Department of Urban and Rural Planning.

State land administration has a relationship with federal government because the state uses the same land legislation and because the federal government is responsible for the standardisation of the implementation in the state context. The Land and Mines Department of the State of Johor was established based on the

Laws of the Constitution of Johor of 1895, the Constitution (Second List), the Public Service Commission Enactment No. 4 (1959) State of Johor and the National Land Code (1965). In Section 12 (1) of the National Land Code (1965), the state authority may appoint a director to the state land and mines, registrar of titles, assistant of lands and mines, deputy registrar of titles, land district administrators, assistant district land administrator, assistant officers and other settlements officer authority as deemed necessary. It is administered by the State Director of Lands and Mines, who is the registrar of titles, deputy registrar of titles, land administrator, collector of land revenue and the assistant collectors. Land administration at the district level is carried out by the district land administrator who directly manages the administration and financial aspect of land administration at the district level. The land administrator at the local level is accountable to the functions of the District Land Offices in land development, land alienation, law and regulation, enforcement and technical, land registration, quit rent and information technology.

5.0 INNOVATION OF LAND REGISTRATION SYSTEM IN JOHOR

Land registration system in Johor is well established, but it has undergone many changes, dating back over many years to the colonial period. At the initial stage, the system was based on manual transactions, however, it has recently adopted a more efficient delivery system. Johor State Government has undertaken several innovative approaches for the land registration system in Johor. These innovations include the introduction of Computerised Land Registration System (SPTB), Johor Land Revenue System (SHTJ), strata registration system, one day title registration, approval over submission, renewal of lease, and utility land registration.

5.1.1 COMPUTERISED LAND REGISTRATION SYSTEM

Most of the land information systems that have been introduced have been developed by the federal or state government. The Computerized Land Registration System (SPTB) was developed in 1995 and was introduced to all the states in Peninsular Malaysia. SPTB automated the procedures of land registration systems. The objective of the system was to provide a cost effective and secure land registration system through the computerization of registration procedures and dealings. The State Government of Johor has successfully implemented the system in registering the land. Nowadays, SPTB well established implemented by improving the system according to the state requirement. The recent revolution of SPTB can shorten the duration of land registration with the reflection of the integration between the SPTB system and land revenue system.

5.1.2 JOHOR LAND REVENUE SYSTEM

The SHTJ system is an online tax payment system that was developed in the year 2004 and it has been fully operational since 2005. Later in the early of year 2018, the system has been upgraded to the SHTJ Version 2.0 with some additional features which meets the current needs of the Johor Land Administration especially on the improvement of the revenue collection process. In particular, the system allows for land tax receipts between the districts, and it is constantly improved to ensure its practicality and efficiency. In order to ensure that SHTJ is organised and systematic, the system is divided into SHTJ (Registration) and SHTJ (Revenue) based on a phase set. SHTJ (Registration) deals with the integration of registration information through SPTB. It generates a registration file to gathered information by items in determining the revenue code and payment amount. This approach can be seen through surrender and re-alienation of land. Meanwhile, under SHTJ (Revenue), all types of state revenue or tax are recorded under SHTJ so that land administrators can check the tax records easily. Figure 3 shows a detailed Johor Land Registration Framework. SHTJ is beneficial to the taxpayers due to its easy and better access. Taxpayers can make tax payments online at any district land office in Johor. With the introduction of the SHTJ system, records of land tax payments can be accessed online and information can be stored more systematically. SHTJ also allows land administrators to identify taxpayers through land title registration. Apart from that, diversification of land registration and restrictions have a direct impact on determining the type and rate of taxes, which in turn will increase the state's revenue.

5.1.3 STRATA TITLE REGISTRATION SYSTEM

E-Strata is a system developed in the year 2015 to facilitate online application of strata ownership. The system is developed on a web-based basis between Johor Land and Mines Office, District Land Offices, organisations, and individuals. The rationale for the development of this system is to expedite the strata application process and transactions in the state of Johor, compared to when the manual method was applied. Through e-Strata, the public can apply and check their application status online. Consequently, the duration of the transactions and non-transactions related to the process can be shortened. With manual approach, the process normally takes 3 months, whereas the implementation of the e-Strata system enables the timeframe to be shortened to within 14 days. Additionally, e-Strata can be used to directly monitor and accordingly, enforce actions to housing developers who fail to apply for a strata title when the project is completed.

5.1.4 ONE DAY TITLE REGISTRATION

Through the SPTB system, the implementation of one-day registration process that enables more than one title registration within a day, has shortened the duration for registration of land titles. One-day registration is an approach to the implementation of strata title transfer (PMS) within one day for the states of Penang, Melaka, Johor, Selangor, and Federal Territory of Kuala Lumpur. This initiative focuses on the “one-piece flow” process which is a continuous work process, particularly, part of the process is completed once at a time, and then transmitted to the next process. This can be referred to Figure 4. Notably, the following criteria are imposed for the implementation of PMS within one day:

- a) Registration of single and cursive transfers;
- b) Only for complete and feasible documents;
- c) Calculation of one day entails 24 hours, only on working days;
- d) Calculation of one day or 24 hours starts from the time the counter issues the receipt up until the registration; and
- e) Pending delivery is not taken into account in the calculation of one-day registration.

5.1.5 APPROVAL OVER SUBMISSION

Johor Land and Mines Office has taken an initiative in light of the “delighting the customer” approach by launching approval over submission, which is a new approach for the application of restriction or transfer permission for properties with restriction of interest. Approval over submission allows the public to submit an application for restriction and receive a letter of approval on the same day, subject to the following conditions:

- a) Application for low-cost housing transfers that have been approved by the Government Secretariat Office of the Johor Housing Division;
- b) Land transfer application involves transfer made in response to affection among family members;
or
- c) Application for transfer by individual without a legal agent or law firm.

Prior to the introduction of approval over submission, the period for the transfer of approval for land under restriction was two weeks. On the contrary, the approval period is shortened to only one day with the implementation of approval over submission. This innovation is deemed as a good initiative of the government in delivering effective and efficient service, and empowering its consumers.

5.1.6 LEASE RENEWAL

According to Section 46 (1) NLC 1965, the State Authority holds the right to reinstate land under state lease or lease of *mukim* on expiration of the lease term. Initially, under Section 79 (2) (b) NLC 1965, before the leasehold land becomes a government land under the stated circumstances, State Authority has no authority to make any decision in respect of the lease term of such land. In response to the wishes of the land owner to extend the lease tenure before its expiry date, the Johor State Authority is the first state in Malaysia who is allowing the extension of lease at any time by using Form 12A of Section 197 and Section 76 NLC 1965. Furthermore, with the commencement of the amendments of NLC in January 2017, Section 90A NLC was introduced to authorise State Authority to extend the tenure of title term. The Section 90A states that the surrender of original title through Form 12A is not required. Thus, when the State Authority approved the application for lease tenure extension, an endorsement of the new expiry date will be made on the existing title.

5.1.7 UTILITY TITLE REGISTRATION

Utility title registration refers to the ownership of utilities. During the surrender and land re-alienation development application, the condition for approval as imposed by the government, among others, is that the landowners or developers are required to provide public facilities. Upon the approval of surrender and re-alienation application, landowners or developers will make a submission of Form 12A to the government, and sites provided for the purpose of electricity supply will undergo separate application to Tenaga Nasional Berhad (TNB). However, this process has been improved to facilitate the development of an area by directly granting the reserves or titles for electricity supply respectively, without waiting for the applications from the utilities provider. Along with the issuance of ownership through surrender and re-alienation of land, a new payable notice will be issued directly to TNB once Form A has been issued and handed over by the landowners or registered developers.

6.0 CONCLUSION

The paradigm of land administration system has revolved around protecting government land, allocating rights to state in terms of land, regulating the land market, and providing access for information and services. Nowadays, land administration refers to the role of the government to the community in obtaining land ownership, providing access to public land, protecting identified values and public spaces, and establishing an information system based on where the land is located, what it is used for, and its value. Johor State Government has taken the initiative to capitalise on technology advancement to improve the

state's land registration system and its functions. Technological innovations have been applied to the state's land registration system as reflected in SPTB, SHTJ, e-Strata, one-day registration, and approval over submission. From the perspective of procedures, Johor's land administration has made improvements in its approaches, particularly in the aspects of utility title registration and renewal of land lease.

The land registration system should be enhanced to provide a modern framework in meeting the rapid growth of development. The current land registration system in Malaysia requires total reformation in the aspects of procedure, legal review, and amendment to the law by Federal Government. In order to reform the land registration system, every state should assess the efficiency of its current land registration application for improvement to be made. Although several innovations and reforms have been executed successfully, State Governments must always be proactive in identifying and adopting new mechanism to tackle and address the unpredictable issues of land administration in the future. This presents further challenges to the government's administrative personnel, especially the Land Administrators.

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APPENDIX

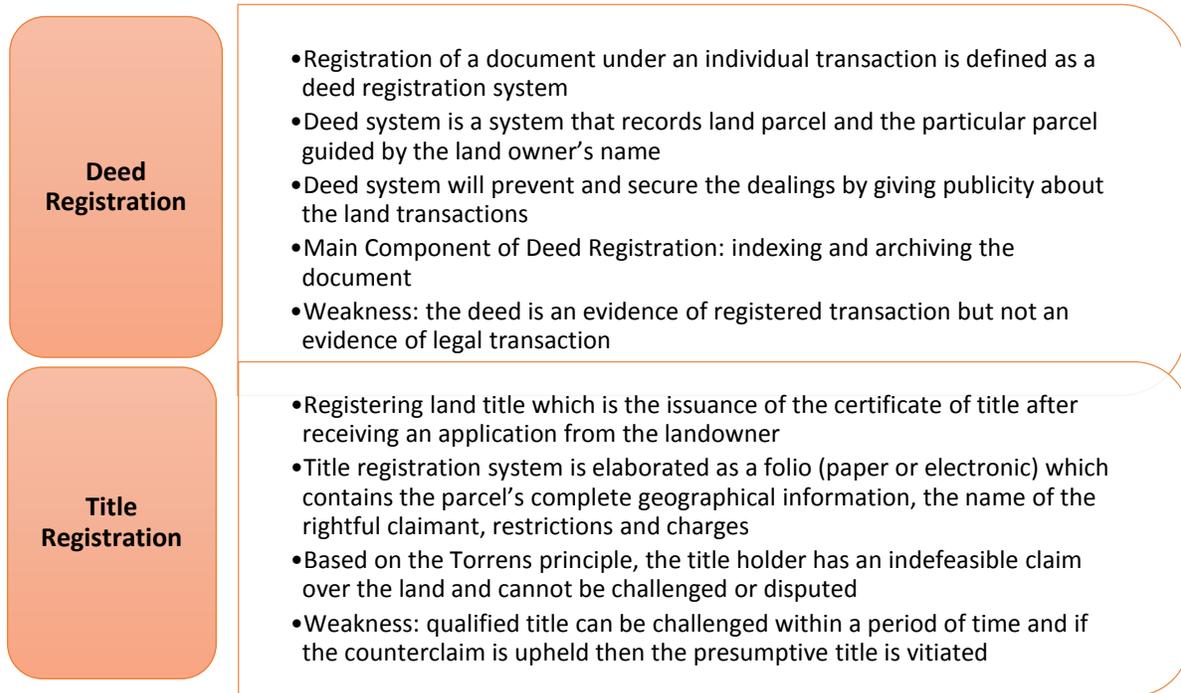


Figure 1: Type of Land Registration

Source: Annamalai. L (2016)

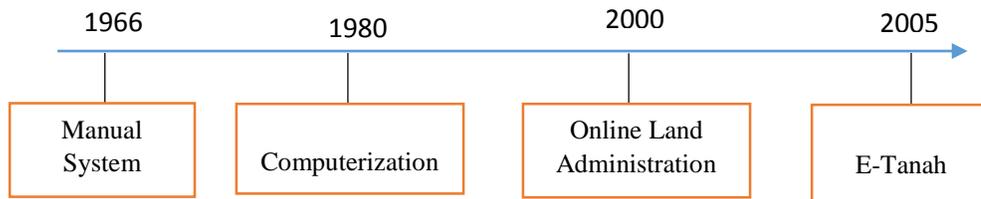


Figure 2: Evolution of land registration

Source: Wu, R., Kepli, Z., & Yazid, M. (2011)

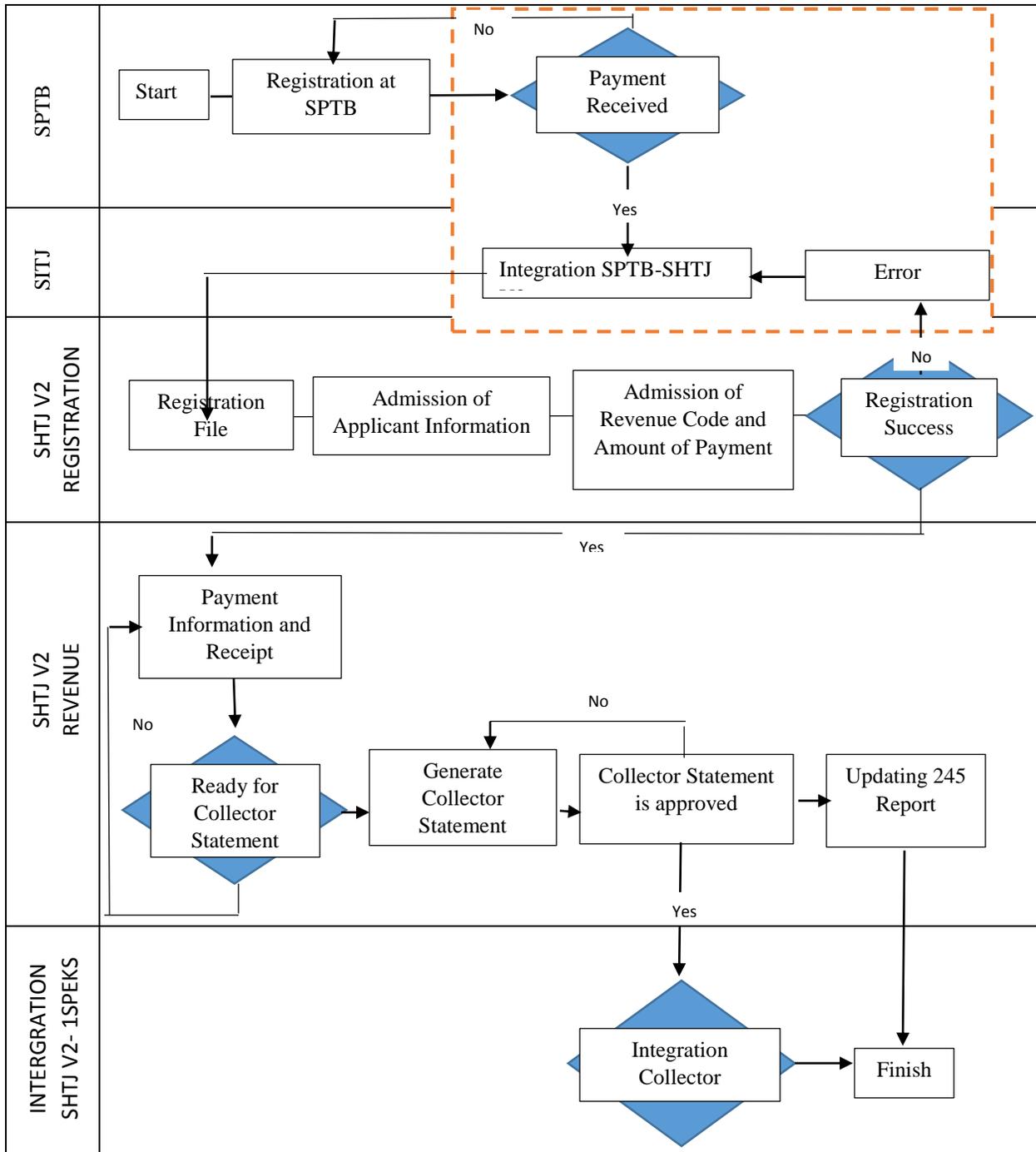


Figure 3: Johor land registration framework

Source: Johor Land and Mines Office

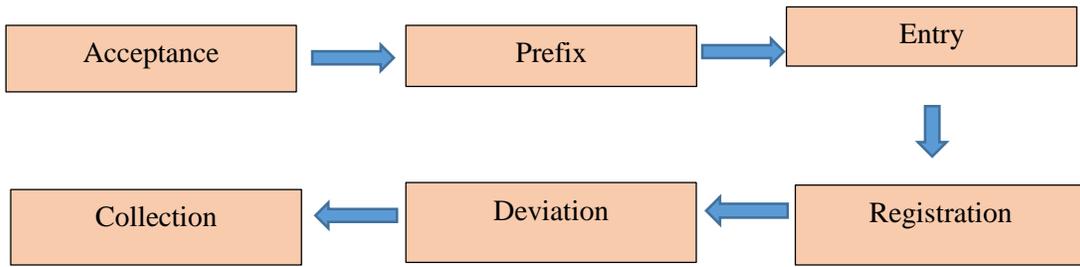


Figure 4: Land registration flow chart under one-piece flow method

Source: mampu.gov.my