



MALAYSIA

LAPORAN PROSIDING

**MESYUARAT JAWATANKUASA
KIRA-KIRA WANG NEGARA (PAC)**

Mengenai:

**Transaksi Tanah Milik
Dewan Bandaraya Kuala Lumpur**

Pegوام:

- i) YBhg. Tuan Derek John Fernandez

**PARLIMEN KEEMPAT BELAS
PENGGAL KEDUA**

**MESYUARAT JAWATANKUASA KIRA-KIRA WANG NEGARA
BILIK MESYUARAT JAWATANKUASA 1, BLOK UTAMA
BANGUNAN PARLIMEN, PARLIMEN MALAYSIA
ISNIN, 19 OGOS 2019**

AHLI-AHLI JAWATANKUASA

Hadir

YB. Dato' Dr. Noraini Ahmad - *Pengerusi*
YB. Tuan Wong Kah Woh [Ipoh Timur] - *Timbalan Pengerusi*
YB. Tuan Wong Chen [Subang]
YB. Puan Nurul Izzah binti Anwar [Permatang Pauh]
YB. Tuan Steven Choong Shiau Yoon [Tebrau]
YB. Datuk Haji Hasanuddin bin Mohd Yunus [Hulu Langat]
YB. Tuan Wong Hon Wai [Bukit Bendera]
YB. Puan Wong Shu Qi [Kluang]
YB. Tuan Muslimin bin Yahaya [Sungai Besar]
YB. Datuk Seri Haji Ahmad bin Haji Hamzah [Jasin]
YBhg. Datuk Roosme binti Hamzah - *Setiausaha*

Tidak Hadir [Dengan Maaf]

YB. Tuan Robert Lawson Chuat [Betong]
YB. Dato' Takiyuddin bin Hassan [Kota Bharu]
YB. Dato' Sri Dr. Haji Ismail bin Haji Mohamed Said [Kuala Krau]
YB. Tuan Haji Akmal Nasrullah bin Mohd Nasir [Johor Bahru]

URUS SETIA

Encik Amisyahrizan bin Amir Khan [Setiausaha Bahagian Pengurusan Dewan Rakyat, Parlimen Malaysia]
Encik Ahmad Johan bin Mohd Affandi [Ketua Sekretariat Jawatankuasa Kira-kira Wang Negara, Parlimen Malaysia]
Puan Siti Noor Akmar binti Zulkafli [Juruaudit Jawatankuasa Kira-kira Wang Negara, Parlimen Malaysia]
Encik Rosli bin Aw Ahmad [Juruaudit Jawatankuasa Kira-kira Wang Negara, Parlimen Malaysia]
Cik Nurul Adila binti Hamdan [Jurubahasa Serentak Bahagian Pengurusan Dewan Rakyat, Parlimen Malaysia]

HADIR BERSAMA

Jabatan Audit Negara

Tuan Haji Khalid Khan bin Abdullah Khan [Timbalan Ketua Audit Negara (Prestasi)]
Puan Yusnani binti Zakaria [Pengarah Bahagian Audit Prestasi I]
Dr. Farida binti Veerankutty [Timbalan Pengarah Audit Sektor Audit Prestasi]
Encik Mohd Faizal bin Abu [Ketua Penolong Pengarah Audit Sektor Audit Prestasi]
Encik Muhammad Zhaffan bin Zaini [Penolong Pengarah Audit Sektor Audit Prestasi]

samb/-

HADIR BERSAMA (*samb/-*)**Kementerian Kewangan**

Encik Azize bin Taib [Ketua Seksyen Parlimen dan Kabinet]

Puan Azreen binti Awang [Ketua Penolong Setiausaha Unit Kawalan Pemantauan (LKAN & PAC)]

Encik Mohammad Adam Danial bin Hafiz Goh [Penolong Setiausaha Unit Kawalan Pemantauan (LKAN & PAC)]

Jabatan Peguam Negara

YBhg. Datuk Amirudin bin Abd. Rahman [Timbalan Ketua Bahagian Penasihat]

Puan Nawal Nadia binti Azimuddin [Pegawai Undang-undang]

Suruhanjaya Pencegahan Rasuah Malaysia

YBhg. Dato' Shamsun Baharin bin Mohamad Jamil [Timbalan Ketua Pesuruhjaya Pencegahan / Ketua Pegawai Maklumat (CIO)]

Jabatan Perkhidmatan Awam

Puan Noor Aini binti Ahmad [Timbalan Pengarah Kanan (Unit Laporan Ketua Audit Negara dan Operasi Khas)]

Jabatan Akauntan Negara

Puan Zuriyanti binti Abdul Hamid [Ketua Penolong Pengarah Bahagian Perkhidmatan Operasi Pusat dan Agensi]

Kementerian Hal Ehwal Ekonomi

YBhg. Dato' Dr. Rujhan bin Mustafa [Pengarah Bahagian Perkhidmatan Sosial]

Cik Suhaida binti Mohd Dahlan [Ketua Penolong Pengarah Perakaunan Bahagian Pembangunan Ekuiti)]

SAKSI-SAKSI**Tetuan Fernandez & Selvarajah**

Tuan Derek John Fernandez [Peguam Cara]

Encik Lee Yong Ching [Wakil]

LAPORAN PROSIDING

MESYUARAT JAWATANKUASA KIRA-KIRA WANG NEGARA PARLIMEN KEEMPAT BELAS, PENGGAL KEDUA

Isnin, 19 Ogos 2019

Bilik Jawatankuasa 1, Blok Utama, Parlimen Malaysia, Kuala Lumpur

Mesyuarat dimulakan pada pukul 10.07 pagi

[Yang Berhormat Dato' Dr. Noraini Ahmad *mempengerusikan Mesyuarat*]

Tuan Pengerusi: *Assalamualaikum warahmatullahi wabarakatuh.* Salam sejahtera, selamat pagi dan selamat datang kepada semua terutamanya kepada Yang Berhormat Naib Pengerusi PAC Parlimen, Yang Berhormat Wong Kah Woh; Yang Berhormat Ahli-ahli Jawatankuasa Kira-kira Wang Negara (PAC) Parlimen Keempat Belas; Yang Berbahagia Datuk Roosme binti Hamzah selaku Setiausaha Dewan Rakyat yang juga merupakan Setiausaha PAC Parlimen; semua pegawai-pegawai ex-officio PAC Parlimen daripada pelbagai kementerian iaitu Kementerian Kewangan (MOF), Kementerian Hal Ehwal Ekonomi, Jabatan Perkhidmatan Awam (JPA), Jabatan Peguam Negara (AGC), Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) dan juga Jabatan Akauntan Negara.

Hari ini apa yang kita nak buat kita akan mulakan— kita akan ada dua mesyuarat pada hari ini. Dan esok juga sebelah pagi dan petang juga kita akan berjumpa dan juga bermesyuarat. Terlebih dahulu, saya hendak mengucapkan terima kasih kepada semua kerana hadir dalam Mesyuarat PAC Parlimen terutamanya pada hari ini.

Jadi, Yang Berhormat Ahli-ahli mesyuarat sekalian, sebelum saya meneruskan perutusan berhubung mesyuarat pada pagi ini, terlebih dahulu saya hendak mengucapkan ribuan terima kasih kepada semua Ahli-ahli Yang Berhormat PAC serta terutamanya Yang Berbahagia Datuk Setiausaha Jawatankuasa ini kerana menyertai satu bengkel iaitu Bengkel Jawatankuasa Kira-kira Wang Negara Komanwel, ataupun *in short* kita panggil CAPAC yang dibuat dan juga dianjurkan oleh CPA UK yang telah dibuat pada 1 Ogos sehingga 3 Ogos yang lalu. Ada di dua tempat. Satu di Parlimen Malaysia dan satu lagi di Hotel Hilton Sentral.

Kita melalui— setelah sahaja selesai daripada bengkel tersebut, banyak ilmu baharu yang diperoleh sepanjang tiga hari kita menyertai bengkel berkenaan. Saya sangat berharap ia dapat membantu Ahli-ahli PAC dalam setiap prosiding kita selepas ini. Sesalinan surat penghargaan terima kasih daripada CPA UK kepada semua Ahli-ahli PAC Parlimen telah dilampirkan dalam sampul kecil milik semua Ahli-ahli Yang Berhormat yang hadir.

Pada pagi ini pula, Jawatankuasa ini akan meneruskan prosiding berhubung penjualan tanah milik Dewan Bandaraya Kuala Lumpur (DBKL). Untuk makluman juga, ini adalah mesyuarat prosiding yang ketiga yang membabitkan isu ini. PAC Parlimen sebelum ini telah mendengar penjelasan daripada Yang Berhormat Khalid Samad, Menteri Wilayah serta wakil daripada Jabatan Peguam Negara serta Yang Berbahagia Datuk Seri Mohd Shukri Abdull, waktu ketika itu beliau adalah Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) berhubung dengan isu ini.

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Isu ini tidak dilaporkan dalam Laporan Ketua Audit Negara dan PAC Parlimen menggunakan punca kuasa di bawah Peraturan Mesyuarat 77(1)(d) untuk menjalankan prosiding mengenai penjualan tanah milik DBKL ini. Justeru itu, saya memohonlah kepada semua yang ada di dalam Dewan ini untuk membantu Jawatankuasa ini sepanjang prosiding terutama sekali dalam memberikan input serta pandangan berdasarkan bidang tugas serta tanggungjawab kementerian dan jabatan masing-masing.

PAC Parlimen memulakan prosiding berhubung isu ini pada 4 April yang lalu dengan memanggil— ini secara latar belakang yang saya hendak maklumkan kerana mungkin ada pegawai yang sebelum ini tidak dapat hadir— dengan memanggil Yang Berhormat Tuan Haji Khalid Samad iaitu Menteri Wilayah. Kemudian pada 19 Jun lalu, dengan memanggil Peguam Negara serta Suruhanjaya Pencegahan Rasuah Malaysia (SPRM).

Jadinya, Ahli Yang Berhormat, ahli-ahli mesyuarat semua sekalian, selepas ini akan berada di hadapan kita pula adalah Tuan Derek John Fernandez, seorang peguam daripada Tetuan Fernandez & Selvarajah yang berpengalaman luas dalam bidang undang-undang kerajaan tempatan, undang-undang tanah, selain undang-undang pentadbiran awam. Selain daripada itu, beliau juga berkhidmat sebagai Ahli Majlis Bandaraya Petaling Jaya sejak 10 tahun yang lepas. Saya percaya resume Tuan Derek John Fernandez dilampirkan dalam sampul kecil semua Ahli Yang Berhormat serta *ex-officio* sebagai rujukan.

Jadi, PAC Parlimen membuat keputusan untuk memanggil beliau bagi mendapatkan pandangan beliau berhubung isu penjualan tanah milik DBKL ini. Jadi selepas ini saya akan memanggil beliau masuk dan kita akan terus sahaja memulakan prosiding kita. Saya mengharapkan bantuan daripada semua Ahli-ahli PAC untuk membantu mungkin menanyakan soalan ataupun dan berkongsi pengalaman mengenai apa yang akan dibentangkan, apa yang akan di-*present*-kan oleh beliau nanti selepas ini. Terima kasih banyak-banyak.

Jadi, kita bolehlah panggil.

[Saksi mengambil tempat di hadapan Jawatankuasa]

Tuan Pengerusi: Selamat pagi. Saya bagi pihak PAC, saya ingin mengucapkan selamat datang kepada Tuan Derek John Fernandez iaitu seorang peguam daripada Tetuan Fernandez & Selvarajah yang saya percaya mempunyai pengalaman yang sangat luas terutamanya dalam bidang undang-undang kerajaan tempatan, undang-undang tanah, selain daripada undang-undang pentadbiran awam.

Jadi, *to be, I mean in short*, kita membuat keputusan untuk memanggil tuan untuk mendapatkan pandangan berhubung dengan isu penjualan tanah milik DBKL. Oleh itu, tanpa membuang masa, mungkin kita boleh mulakan mesyuarat pada hari ini. *I welcome you to be here today, thank you very much.* Mungkin Tuan boleh membuat— saya nampak ada *slide presentation* dan saya serahkan *floor* ini kepada Tuan.

Akan tetapi, sebelum itu, saya akan memaklumkan mengenai terma rujukan atau TOR prosiding penjualan tanah milik Dewan Bandaraya Kuala Lumpur di bawah Kementerian Wilayah Persekutuan yang telah dikemas kini Julai 2016.

Pertamanya, kita mengenal pasti manual operasi standard penjualan tanah milik DBKL.

Keduanya, mengenal pasti manual operasi standard pembangunan tanah di bawah seliaan DBKL— *do you have a copy?* Mungkin boleh bagi juga kepada— dan sama ada DBKL memberikan serta memasukkan ruang pandangan yang diberikan kepada penduduk terhadap pembangunan di sesuatu kawasan.

Ketiga, jumlah keluasan tanah milik DBKL yang belum dibangunkan serta pecahan kawasan hijau, rekreasi, kediaman dan komersial yang terkesan menerusi pemakaian versi akhir *KL City Draft Plan 2020*.

Keempat, status tanah meragukan yang dijual serta tindakan yang diambil pihak kementerian dan DBKL.

Kelima, sama ada wujud kepentingan konflik dalam isu ini terutama sekali menerusi penglibatan Yayasan Wilayah Persekutuan dalam penjualan tanah milik DBKL atau pemaju bersama untuk tanah-tanah berkenaan.

Keenam untuk TOR kita adalah status kes tanah Rimba Kiara.

Jadinya, tanpa melengah masa, saya mempersilakan Tuan Derek Fernandez.

Tuan Derek John Fernandez [Peguam Cara Tetuan Fernandez & Selvarajah]:

Dengan izin Yang Berhormat Datuk Pengerusi PAC Parlimen dan Ahli-ahli Jawatankuasa, Ahli-ahli Yang Berhormat PAC Parlimen Malaysia.

Terima kasih kerana memberi saya kesempatan untuk datang sini dan memberi sedikit keterangan pakar berkenaan dengan perkara-perkara pemilikan dan penjualan tanah DBKL.

Sebenarnya ini bukan— ini adalah kali pertama saya dipanggil sebagai pakar. Tetapi saya telah memberi keterangan di Jawatankuasa Ketelusan dan Pentadbiran di Dewan Undangan Negeri Selangor di mana saya telah— kes boleh dikatakan lebih kurang sama di SELCAT yang pada masa itu dipengerusikan oleh *Speaker* Teng Chang Khim di mana saya telah memberi keterangan dan diterima oleh SELCAT dalam laporannya.

Saya juga telah memberi keterangan dalam Jawatankuasa Kecil Dewan Undangan Negeri Selangor mengenai kerajaan tempatan mengenai kehilangan tanah-tanah awam di Petaling Jaya dan keterangan saya juga telah diterima dalam laporan jawatankuasa tersebut.

Dengan tidak membuang masa lagi, saya telah menyediakan lebih kurang 40 slaid kecil mengenai perkara ini dan sebenarnya tajuk dan skop ini adalah begitu mendalam. Ia bukan satu perkara yang senang difahami oleh semua pada kali pertama. Saya telah berada dalam bidang ini selama 30 tahun sebagai peguam dan saya juga 10 tahun dalam MBPJ sebagai Ahli Majlis dan saya juga pengerusi jawatankuasa berkenaan dengan *zoning* tanah dan juga pembangunan tanah dan *master plan* dan sebagainya. Jadi kalau Ahli-ahli Yang Berhormat perlu sedikit *explanation* dan sebagainya, tolong tanya soalan kepada saya.

Okay, just to let you know, it is not very easy to understand on the first time, I understand. This is a specialist field. So, please bear with me. If you need any questions— because I might assume you know something when actually it is not fair to assume and make an assumption. I hope I'll be able to explain. Okay.

A bit more comfortable if I stand, if that is all right with you?

Seorang Ahli: Yes.

Tuan Derek John Fernandez: *Okay, all right, thank you.*

So, I'll take you through the first slide. In order for you to appreciate this whole thing, because you will be hearing evidence from everybody, you must understand that the disposal, that means the selling or disposal by way of joint venture of land in Federal Territory of Kuala Lumpur, of course, the same principles may apply to Putrajaya as well as Labuan, you need to understand the legal framework.

I don't want to give you a lecture in law because this would be one semester at a university. There are so many books there and we go into the details, we will often get lost. But, understand, there's a number of laws operating. Ia bukan one law sahaja.

So, for land in Malaysia, we have the Kanun Tanah Negara (KTN). Of course, in KL, we also have this addition of Federal Territory (Planning) Act. Now, kenapa planning dan tanah? Macam mana ia berkait?

This is a question which you can ask. It is a very sensible question. I will give you an example so you will understand. If you have a piece of land, let's say it is zoned as a residential for houses, if you are only allowed to build one-storey bungalow, the land has a certain value only. So, when you valued it maybe RM120 per square foot, if you are allowed to build a 100-storey, the land is no longer RM120 per square foot. It is worth much more.

Now, 100-storey, we actually use the word plot ratio, in planning, that means how many times the built-up area or the floor area is relative to the land. So, for bungalow, let us say you have two-storey and you have 5,000 square feet and your plot size is 5,000, your plot ratio is one.

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So, you must understand land value is very kait dengan land use and development intensity. Kita panggil intensity development. Intensity kalau commercial, they use plot ratio. In DBKL, they use almost all plot ratio. In other states, they use plot ratio and density. Berapa orang boleh duduk tempat dalam satu ekar dan sebagainya. So, it is very clear.

So, you cannot separate land value with development zoning and intensity. So, this is the first thing you must trigger your mind when you go through all this evidence. If not, you will not see what is being done. Okay, I think I give the example that is very clear. So, that means a two-storey bungalow, the land is worth less than a 100-storey commercial building or 50-storey residential apartment. Jauh berbeza.

So, we have the Planning Act for DBKL. DBKL is lain sedikit. Di seluruh Malaysia, hanya di DBKL pakai akta sendiri. Lain-lain PBT di Malaysia dia pakai Town and Country Planning Act 1976, 100 percent. Only Federal Territory ia ada perbezaan. You need to understand this. So, perbezaan ini mungkin salah satu daripada you punya siasatan sama ada kita perlu semua di Malaysia di bawah satu akta sepertimana is practiced-lah. Except only in DBKL. Because this act has given some rise to issues that there is a loophole, there is some problems which if it is not done...

Datuk Haji Hasanuddin bin Mohd Yunus [Hulu Langat]: *Sorry. Meaning that DBKL has to use the only akta there?*

Tuan Derek John Fernandez: *They use for planning. They use the Federal Territory (Planning) Act 1982.*

Datuk Haji Hasanuddin bin Mohd Yunus: *Bukan pilihan?*

Tuan Derek John Fernandez: *Bukan pilihan.*

Datuk Haji Hasanuddin bin Mohd Yunus: Okey.

Tuan Derek John Fernandez: *This is passed for them.* Akan tetapi, seluruh Malaysia, *Town and Country Planning Act 1976.* To be more accurate— because I am a specialist— DBKL uses some part of the *Town and Country Planning Act 1976* but the most important part it uses its own akta. It is not pilihan. It is the law. Some got overlap. You know, if you have two pieces of law, some still apply to DBKL and then some part, no, they have their own method. Okay. So, maybe one of the things you need to discuss ialah sama ada we streamline under one. It is quite important. So, you tengok *Town and Country Planning Act 1976* also applied to the DBKL tetapi only a few bahagian. Bahagian IV tak. Bahagian IV is the most important, it is dealing with *planning control.* Then...

Tuan Pengerusi: Maaf. Maknanya bawah DBKL ada satu lagi tambahan?

Tuan Derek John Fernandez: Ya, tepat.

Tuan Pengerusi: Okey.

Tuan Derek John Fernandez: *Then, we have Local Government Act 1976.* This is also applied. Some applied to DBKL, some didn't apply to DBKL. Macam mana? Dalam semua PBT di Malaysia, *the local authority is the city council or the municipal council* atau dia punya pejabat tanah. *They consist of not less than eight, not more than 24 councillors* with Datuk Bandar ataupun YDP. Itu jadi satu badan. Akan tetapi, DBKL tidak ikut ini. *DBKL got their own Federal Capital Act* di mana only ada seorang sahaja iaitu *the Commissioner.* The Commissioner is Datuk Bandar. Yang *advisory committee* itu bukan *councillors.* *Advisory committee* memang tidak ada kuasa. *Advisory committee advise* tidak payah dengar, *is no problem.* Okey?

So, they have different governance system in Federal Territory and different governance in the whole of Malaysia. In the whole of Malaysia, seseorang tidak boleh buat keputusan. Seseorang tidak buat. Datuk Bandar tidak boleh buat keputusan. Dia mesti dapat majoriti sokongan daripada Ahli Majlis yang dilantik oleh parti-parti dan sebagainya. Ada NGO. Saya dari golongan NGO sebenarnya. *State* lantik. Akan tetapi, di DBKL, seorang buat keputusan. So, ini penting to understand. Okay, next.

So, your question one and two...

Datuk Haji Hasanuddin bin Mohd Yunus: Sorry. Saya mendapati dalam kenyataan ini bahawa maknanya ada baiknya benda itu dipinda?

Tuan Derek John Fernandez: Itu pandangan sayalah.

Datuk Haji Hasanuddin bin Mohd Yunus: *I think that's the point.*

Tuan Derek John Fernandez: Kerana kita perlu *streamline* di Malaysia di bawah satu sistem ketelusan, satu sistem pentadbiran tanah dan juga kebenaran merancang.

Datuk Haji Hasanuddin bin Mohd Yunus: *Sorry.* Maknanya— bukan saya hendak keluar tajuk tetapi penting untuk kita sebagai Ahli Parlimen untuk mencadangkan sesuatu kepada Kementerian Wilayah nantilah. Terima kasih.

Tuan Derek John Fernandez: Terserah kepada Ahli Parlimen.

Tuan Wong Chen [Subang]: *Derek, before you continue.*

Tuan Derek John Fernandez: *Yes.*

Tuan Wong Chen: *So, you said one person calls the shot. Is it the Minister or is it the Mayor?*

Tuan Derek John Fernandez: *Okay, I am going to go through to reiterate. So, under the Federal Capital Act— well, under the Planning Act, you would think it is the Datuk Bandar. You would think. The commissioner.*

Tuan Wong Kah Woh [Ipoh Timur]: *What is the Planning Act that you are mentioning?*

Tuan Derek John Fernandez: *The Federal Territory (Planning) Act of 1982. The Federal Territory (Planning) Act. So, you would think that it is the Datuk Bandar. And it says, "The commissioner which means the Datuk Bandar".*

The problem is the Federal Capital Act has a clause which says Datuk Bandar must follow the Minister. The Minister's instruction to Datuk Bandar has got to be followed and often this is used...

Tuan Pengerusi: *Yang instruction itu, adakah dinyatakan instruction secara verbal, bertulis ataupun kena ada nota arahan?*

Tuan Derek John Fernandez: *Dia tidak bagi tetapi arahan. Saya akan go through the section. It doesn't have to be in writing but normally you will see a small scribble in the corner of a letter— "Disokong" dan sebagainya. Itu sokongan bukan sokong. Itu arahan. Dari segi administrasi, bila Datuk Bandar terima, dia kata, "Saya mesti mengikut". Soalan ini memang lebih serius kerana Minister duduk di office di Kuala Lumpur di atas pejabat Datuk Bandar. So, memang dia ada office sana dekat DBKL. So, ini jadi problem dari segi pentadbiran. Apabila permohonan seorang ditolak oleh Datuk Bandar Kuala Lumpur, runner datang masuk, dia akan press lif pergi ke Minister, jumpa, override.*

Ini tidak healthy. Menteri Besar Selangor tidak duduk di MBPJ. Chief Minister Penang tidak duduk di Majlis. Macam mana you ada office dalam sana? Ini bukan healthy. Because, pihak Datuk Bandar berasa kecewa. Dia macam, "Saya sini sebagai office boy kah apa ini?" So, ini memang dari segi pentadbir awam tidak healthy. Sebenarnya Minister duduk di Putrajaya. Ada kadangkala you datang, ada meeting dan sebagainya tetapi pejabat tetap— it is not healthy to have a full time office there because it undermines the leadership. If for instance— even our

EXCO members don't have a seat or a room or an office in MBPJ because the Mayor will be intimidated. It is very difficult to do the job whenever I say something, they run upstairs and it is not in a professional manner. So, this is something that you need to understand. I will go through the sections.

So, untuk your first two points, the manual dan sebagainya, actually it is already answered in a case. So, the huge public outcry relating to the management of public land— ini tanah awam. Tanah awam dia boleh make it as a kawasan lapang, tanah untuk infrastruktur, tanah untuk community hall, green belt— banyak tanah ini. Memang ada huge outcry di Federal Territory di dalam media semasa dan dalam kes yang the latest case iaitu Aset Kayamas di mana didedahkan kali pertama— memang if you are in government, you know-lah. But for the public, how land alienation takes place in KL? How it is being done practically? Not looking at the manual because the manual basically makes it the Minister's call. So, we look and the Mayor has to testified. So, these are the cases— this is the former FT Minister but even now the practice is still the same. The practice has not changed. The practice is still the same. The power is still the same. Okay? Whether it is before or now, it is still the same.

So, you can see that he was asked— the former Mayor— regarding how DBKL is selling land or joint-venture land. He has testified in the court. Inilah keterangan yang bersumpah oleh former Mayor. [Merujuk kepada slaid pembentangan] So, these are other things. Not only Aset Kayamas. The other cases involving KL Plan, Taman Rimba Kiara, Setiawangsa, Titiwangsa punya tempat— banyak. Dia memang every day it is going on. Ada website dedicated sekarang DBKL Watch di mana— in fact, readership almost a million people have viewed. This is an issue which is important to people in the Federal Territory. As it is important in other states. Negeri Selangor pun sama juga, not any difference. Okay, next one.

So, the most recent article is The Edge where the issue of conflict of interest between DBKL, Federal Territory Minister, Yayasan Wilayah Persekutuan, pemaju and resident was highlighted in a very extensive coverage in The Edge. They talked about it. And I think Yayasan katakan sekarang dia tidak mahu buat— don't go into property lah. Mungkin have some issues there.

I hope you all know that Yayasan Wilayah Persekutuan is a company which you can do a search. The objective of the company is not charity. It is stated there as commercial. Number two, it is a company limited by guarantee under the objectives of the company. Now no longer required under the Companies Act but the objective is there. Although they said they are mandated under the constitution is a charity but the objective in the company registry, at least at

the last search, I don't know whether they have amended it but this is under previous administration.

Number two...

Tuan Pengerusi: *Ya, we are talking about the Yayasan Wilayah Persekutuan. Yayasan is a foundation kan? Akan tetapi, saya minta sekretariat nanti keluarkanlah. Keluarkan the whole objektif dan segalanya fasal yayasan itu. I think it is good for the Ahli untuk tengok and have a copy of that as well.*

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Tuan Derek John Fernandez: *You need to do a full search at the Companies Commission. It is a company limited by guarantee under, I think, I believe, section 44(3) of the Companies Act. Company limited by guarantee cannot carry out ownership and selling off property without the Minister's consent. So, that is number one the thing that you need to check.*

Datuk Haji Hasanuddin bin Mohd Yunus: *This Yayasan is registered under JPM or under SSM?*

Tuan Derek John Fernandez: *Under SSM.*

Datuk Haji Hasanuddin bin Mohd Yunus: *Okey.*

Tuan Derek John Fernandez: *It is a registered company. I will go through the company search in the moment. I am just giving you the overall background. It is limited by guarantee and sitting by virtue of constitution, it is the Federal Territory Minister and the Mayor. So, the constitution now— understand what this means.*

Tomorrow I can form a yayasan, there is no problem— company limited by guarantee. And let us say I put YB Datuk Pengerusi as my chairman. I don't ask his permission. I put there in my constitution, you are automatically my chairman and you are also on my member board. Memang later you decline, tak apa, tapi I register first. Okay? Okay.

Datuk Haji Hasanuddin bin Mohd Yunus: *Without permission?*

Tuan Derek John Fernandez: *No. They will need to have consent but sometimes they put in the constitution, they can change the constitution and lock it in. So, this one— bukan the FT Minister macam sekarang. It is not as if he applied, you know. It is in the constitution that all FT Minister will be the chairman. This is the problem. Of course, he ultimately has to agree, he can say he doesn't do it.*

So, we are going into the details now. I just gave you the general picture. So, that is why this one is big. If you read the article there, you will go through in detail. Okay, go through? Okay.

Tuan Pengerusi: *Sorry. Bermakna it is that easy to form a yayasan from your explanation?*

Tuan Derek John Fernandez: *Well, yes. I mean that is not impossible to form. As long as the paperwork is there, you say I want to form a foundation, the foundation is to raise money for, say charity and then I comply with the format, I can form it. But when you use the yayasan—and everybody thinks yayasan must be very good, it is very good. Macam Selangor ada Yayasan Selangor, sama juga. Bukan sama, because this yayasan is commercially in nature. So, furthermore, the people who sit in the yayasan actually approve the kebenaran merancang, they approve the land semua itu. Dalam Yayasan Selangor, Menteri Besar Selangor doesn't sit on MBPJ. Dia tak approve. So, yes you can form a yayasan, I wouldn't say it is very easy but with the right support, you can form it and you can operate.*

So, you don't look at the word yayasan. When you study, you look at what it actually does, who sits there, what is the power is more important to focus. Okay?

Tuan Wong Kah Woh: *Derek, sorry. I may have missed some points just now. Sorry. As Yayasan Wilayah Persekutuan is concerned, which law does that— what was the body that...*

Tuan Derek John Fernandez: *Companies Act, Companies Act.*

Tuan Wong Kah Woh: *It falls under Companies Act?*

Tuan Derek John Fernandez: *It falls under Companies Act.*

Tuan Wong Kah Woh: *Just like— okay.*

Tuan Derek John Fernandez: *It is a company limited by guarantee. As you know, it is a common vehicle to use the company limited by guarantee.*

Puan Nurul Izzah binti Anwar [Permatang Pauh]: *[Bercakap tanpa menggunakan pembesar suara]*

Tuan Derek John Fernandez: *Ya. So, we will go to the— I have the SSM search here. I will show it to you.*

Tuan Wong Kah Woh: *But how about other yayasan like Yayasan Perak, Yayasan Selangor?*

Tuan Derek John Fernandez: *They may be different. Some may be formed by statute, some may be formed...*

Tuan Pengerusi: *Ya, there are two types.*

Tuan Derek John Fernandez: *Ya, there are two types. Some may be formed also by guarantee but in that case, it is 100 percent guaranteed and controlled by the state and then, who sits on the yayasan and what is his power. So, they are all different. Okay? They are not the same for all.*

Tuan Wong Kah Woh: *Would SSM actually restrict the usage of the word yayasan? Because it is quite misleading.*

Tuan Derek John Fernandez: *They would. I believe there would be procedures to do that but obviously it is not enough because we will go through what has happened. So, obviously yes, they should, they would. I mean you have to apply to get the approval. You can't just automatically set up a yayasan. You need an approval. Often, the administrated thing is government. But this yayasan is not subject to the scrutiny of the Auditor General. There is no file that is written and this thing is not—*

So, the oversight mechanism is not there. It is a company, a company. Only under the registrar, under the SSM, is only the governing body. It doesn't have external oversight macam PBT. It doesn't have this. Okay? So, you need to go into the weaknesses in the moment.

So, in the case of pendakwa raya— I am going to Tengku Adnan. I am not saying it is only Tengku Adnan. This is a normal thingy. The DBKL minister has answered your question one and two. Okay? He has already answered for you. He said DBKL cannot sell land unless it complies with section 101(r)(i). Okay, long section.

What the section says? Basically, without the approval of the minister, local authority cannot sell the land in the case of Federal Territory. In the case of the rest of Malaysia, the state authority has to approve the sale of the land. Okay? It is prohibition under. So, what the Mayor is saying?

Point (a), "The decision to sell the land cannot be mine. It is not mine. It has to be approved by my boss." He calls him boss, so he must be the boss. Okay, we go through the case. So, section 101 of the Local Government Act basically says "No sale..."— you look at the (i)— "or other alienation of immovable property..."— immovable is tanahlah, tanah. Tidak boleh berlaku without consent of the state authority. So, for Federal Territory, the equivalent section under the Federal Capital Act for state authority would be the minister in charge of the Federal Territory.

Now, this is something I hope maybe semua boleh dapat faham. Ada perbezaan yang ketara di mana an oversight kerajaan negeri dengan FT Ministry. Di kerajaan negeri, memang dia punya procedure governance is more restrictive. Dia mesti table dekat EXCO dan dia ada banyak proses. Tetapi di Federal Territory, sikit luar biasa. Dia macam kuasa sebagai Menteri Besar tetapi tanggungjawab bukan sebagai Menteri Besar. Ketelusan dan governance bukan seperti Menteri Besar. Tidak ada oversight. Dia seorang sahaja. So, ini jadi perbezaan. Dan adakala you tengok bahawa FT Ministry macam kerajaan negeri. Dia anggap dia buat, oh, ini yayasan macam state buat, saya boleh buat juga. Akan tetapi, dia bukan state.

Sebenarnya sejarahnya, *FT Ministry* dalam PMO punya *department* dan sebenarnya bila *you* ada Datuk Bandar, *you* tidak sebenarnya perlu *FT Ministry*. Memang tidak ada kerja *because* Labuan ada *authority*, Putrajaya ada *authority*. Memang dahulunya rujuk kepada PMO, *Prime Minister's Office*, dahulunya, tetapi sekarang dia ada *ministry* macam itu. Itu jadi *problem because what is the scope of work of the FT Ministry?*

So, *you see the problem is, I think* lah, sekarang *FT Ministry* dah masuk Pelan Malaysia semua, dia bagi kerja *like* tambahanlah *because you got the ministry there but the question is do you really need a ministry? When you are talking about DBKL, it is a federal body and the Mayor is enough to actually run the whole of Kuala Lumpur as is Putrajaya, Perbadanan Putrajaya and Labuan also they can run themselves, they don't really need. But anyway, it is there. Okay?*

So, *they cannot transfer or sell the property without the Minister's approval. So, we see very detail the evidences given which is reported in The Star of what the Mayor had said and this is what he said. Now, this is also— made me very surprise. "When doing outright sales, the process..."— this is a keterangan dalam mahkamah dalam kes Aset Kayamas. Ini adalah prosecution di bawah MACC. "When doing outright sales, bila saya nak jual tanah, the process usually starts with the application by a pemaju to buy and develop any land that is belonging to DBKL." Now, any land ini bermaksud padang pun boleh. Maybe Parlimen, saya pun boleh pohon juga ya. Walaupun dia tak belong dalam DBKL masa itu, tak didaftar, dia— it is under the Federal Commissioner of Land, under the ministry, it is in DBKL jurisdiction, so I can apply. Okay?*

Application was done through a letter, surat sahaja dan the developer sent to the Federal Territory Minister for his sokongan. So, surat hantar kepada minister, konon dia kata sokongan. Itu proses permulaan untuk dapat tanah. Outright sales, in this case of land, owned by the Mayor of Kuala Lumpur to the developers for certain projects such as affordable home. In the past, the concept of development on DBKL's land was a joint venture. Dahulunya dia tak jual, dia kata mesti ada JV tetapi ada kes di mana dia jual outright.

Now, ini penting. DBKL never made any advertisement to advise, to invite any person to buy the land. So, walaupun ada orang tulis surat, tidak didedahkan ini adalah untuk dijual untuk mendapat harga yang paling baik. So, I think you all on the PAC know it is the best price— is a governing. We have the best price sometimes to tender, sometimes to direct nego but they also invite for quotation.

So, what DBKL Mayor is saying is we have never advertised the land for sale. So, ini jadi problem. Kalau ada padang di sana, padang DBKL, saya tulis surat— tetapi ada banyak yang tak tulis surat kerana dia kata ini padang, kenapa saya nak beli padang? Ini padang untuk padanglah, macam mana boleh ditukar jadi lain-lain? Akan tetapi, satu surat sahaja boleh

disampaikan kepada *minister* dan kalau sokongan diberi, proses ini bermula. So, ini adalah— memang di negeri-negeri lain *this process* tak boleh.

Okay, next slide. So, Tan Sri Ahmad Phesal Talib *startling admission of how thing is done— the disposal of the public land.* Dia memang ada lubang untuk *abuse*. Saya tak kata semua *abuse* dan *corruption* tetapi ada kelemahan yang ketara yang harus diatasi sama ada dengan prosedur, pindaan undang-undang dan sebagainya.

Nombor satu, dia jelas, seksyen 101 Akta Kerajaan Tempatan 1976, DBKL tidak boleh jual tanah tanpa kebenaran Menteri. *Okay? So, the Menteri is controlling—*

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Number two, under section 13— tadi sudah diwujudkan soalan— *Federal Capital Act 1960, the Minister can give directions to Datuk Bandar— referred to as Commissioner* ya, dalam akta dipanggil *Commissioner—* yang mesti diikuti. Ini, *yes*, begitu. Di semua negeri di Malaysia tidak ada Menteri Besar boleh memberi arahan yang patut diikuti. Hanya ada di Akta Kerajaan Tempatan, *the state authority can give directions not inconsistent—* ini penting— yang tidak bercanggah dengan kuasa PBT di bawah akta. Ini patut diikuti di mana bila saya buat arahan kepada *you*, ini polisi arahan.

Okey, sekarang kita hendak *25 percent affordable housing*. Bukan kata ini *application you* lulus. Tidak boleh. *Because* ini bercanggah dengan kuasa PBT di bawah akta yang budi bicara adalah pada PBT untuk meluluskan KM. Di negeri Selangor dan di negeri-negeri Malaysia dipanggil KM, kebenaran merancang. Di DBKL dipanggil *development order* lah. Samalah.

So, memang ini adalah satu seksyen yang begitu peliklah bagi saya. Kalau ini, *it means* tidak payah Datuk Bandarlah sebenarnya. Tidak ada ruang untuk Datuk Bandar *function because* yang *call the shot is the Minister.* So, *you need to decide which is the proper body because it gives a lot of conflict in administration.*

Okey, *now* ini yang paling penting. *I hope* Jawatankuasa *you can maybe appreciate this.* Apakah *value* tanah ini? Bila saya tulis kepada Datuk Bandar atau *Minister*, siapa— *the valuation is on what basis? You* kata dia ada *valuation, land valuation. On what basis?* Ini yang paling penting. *You based on— this is* padang. *You based on* saya akan tukar kepada komersial tetapi saya akan bagi *you plot ratio four* atau saya akan bagi *you plot ratio six* atau saya akan bagi *you plot ratio 10.* So, hasil kerajaan berkait dengan intensiti pembangunan yang boleh dibenarkan.

So, *that is why we have this plan.* So, *actually the Valuation Department should open the plan.* Ini sudah *plot ratio 10*, jadi saya kira premium berdasarkan *plot ratio 10*. Bukan kira premium *plot ratio* satu, lepas itu sudah benarkan *plot ratio 10*. Memang kerajaan *has lost a lot of money.*

Secondly, whether suitable or not the land for the purposes of selling or joint venture development. So, this is the question that you have to ask. Because, if not, they will be abused. You pay the government for plot ratio— I think in one case, I will show you the agreement, if the plot ratio they say maximum six, they kira all that one six tapi actual bagi 10. Antara 6 dan 10 itu it is millions, bukan 100 thousand, million difference in the value that the government now has not got this money. So mungkin you need to look into this.

Tuan Wong Hon Wai [Bukit Bendera]: Derek, you mentioned about the plot ratio. I think we understand that the KL Structure Plan is not gazetted.

Tuan Derek John Fernandez: Yes.

Tuan Wong Hon Wai: So we understand that when it is not gazetted, under the TCPA, it is called draft. It got certain statutory meaning when it is called draft. Even to talk about the draft structure plan, before the draft structure plan, there must be some planning document which is controlling the plot ratio intensity. So, what are the current— I mean what are the existing planning document before structured planning is effective that can control the plot ratio? It cannot be arbitrary to say a number.

Tuan Derek John Fernandez: All right, it cannot be. Okay, to correct you, KL's City Plan was passed in January of this year, setting the intensities. So, this is 2019.

Puan Nurul Izzah binti Anwar: Can you please explain which version was gazetted versus the version that everybody was protested against?

Tuan Derek John Fernandez: You bear with me, I have the whole slideshow on that.

Puan Nurul Izzah binti Anwar: All right.

Tuan Derek John Fernandez: On what was before, what was after, what happened and you can clarify all that. I got the whole slideshow on that which we are going into detail.

But, just to say, there is a plan. But this is not the plan that was tabled before the public for objection and you will see that there have been tremendous changes. The admitted changes are about 200 plus. The unadmitted ones in which the documents have been given to, I think some MPs have already got those documents, is another 200, so you got about like nearly 400, 350 changes in land zoning and land intensity that have never been displayed to the public that has increased the value of those lands and the most important, it has created an unsustainable use. What you thought was a park, no more park, it has been taken away. What you thought was a community hall, now is something else and it never went through the public process. I am going to that detail. So, they did have that.

Earlier on when the draft was tabled is 2008, they never have that. So, you asked me what document? There were the comprehensive development plans before that which locked the

densities and all that. So, they came up with draft, the public participated, everything was agreed, all that went through, and then the former Minister refused to pass the draft. He just kept in a meja like this, don't want to pass. Although the law says under the interpretation of Legislation Act that when you are given a power, you must exercise that power expeditiously, it says that. Where there's no time— so, nine years has passed.

In the meantime, all development orders have been granted which is in conflict with the one which you have agreed with the public but you did not pass it. So, that is why there is disharmony, there is anger, this problem. Okay.

Tuan Wong Hon Wai: What I am saying that before the draft, they should have one...

Tuan Derek John Fernandez: Yeah, comprehensive. They have a comprehensive development plan.

Tuan Wong Hon Wai: Comprehensive. So, are they following the comprehensive?

Tuan Derek John Fernandez: No, no, no. They didn't follow the comprehensive, they didn't follow the draft and now they have got the actual one and we have to see lah whether they are going to follow or not. But the actual one, all things have already been changed. Okay. So, Titiwangsa is the case of one where even it was originally something else. I'll go through the detail.

Next one. Okay. So, the local plan...

Tuan Pengerusi: I would like to ask, you mentioned that it was put on the table and then you mentioned about the power, you tidak guna power ini semua. Siapa yang you refer kan?

Tuan Derek John Fernandez: This is the former.

Tuan Pengerusi: Siapa the former? There are so many former Ministers.

Tuan Derek John Fernandez: Tengku Adnan was the former Minister where this draft was put— it went through a process, it cost 15 million dollars. This is the book. [Merujuk kepada slaid pembentangan] This is the draft in 2008. I participated. I appeared before the panel six times. I think at that time was Datuk Seri Halimatun was the Chairlady appointed by the government to chair this process of hearing public objection. Over one year of— hundreds and hundreds of members of public saying this was....

Puan Nurul Izzah binti Anwar: No MPs?

Tuan Derek John Fernandez: MPs also came. That time opposition MPs lah had come in. Yes. Had come in.

This was DBKL proposal for Pembangunan Mampan Kuala Lumpur 2020, best city in the world, everything semua ini. One book is telling you how beautiful this plan is. So, after that process, they have a Jawatankuasa Pendengaran Bantahan. They go through, they make

recommendation, they put in whatever, sudah habis okey, then they passed the plan to the Datuk Bandar. Datuk Bandar met with them and say okay, no problem, Minister must gazette and then suddenly the book going into ice, dibekukan. Sampai tahun 2018, it came back. Akan tetapi di antara masa yang dibekukan sekarang, lebih 223 perintah pembangunan dikeluarkan bertentangan dengan apa yang telah melalui proses bantahan awam.

Dia *admit 200* lebihlah di bawah— di buku yang digazet di belakang dia, dia ada tunjuk satu *list* di mana ini semua diluluskan yang bertentangan dengan apa yang dibentangkan untuk kelulusan. Okey, dia *admit*. Akan tetapi selain daripada *list* ini, ada satu lagi *list* yang mungkin, ini saya tidak tahu klasifikasi di bawah OSA tapi MP-MP KL memang sedar ada *list* kedua di mana tidak masuk lagi dalam buku tetapi sudah diwarnakan dan ditukar dia punya *zoning*. Ini jadi isu hangat semasa.

Kalau saya bilang semua itu, ini lebih dari 1MDB. Kalau nilai tanah, nilai *increase* tanah lebih kurang 400 tanah yang ditukar, ini memang dia punya kesan lebih daripada 1MDB. Kalau kira macam itulah, *banglo land* RM100 sudah jadi RM500, *so you* bilang. Okey.

Tuan Pengerusi: Kita fokuskan kepada isu kita.

Tuan Derek John Fernandez: *All right, sorry. The Mayor and FT—* masalahnya di poin (e) bahawa Datuk Bandar dan juga Menteri mempunyai kuasa mutlak untuk perintah pembangunan. Kuasa mutlak iaitu *Minister* sebenarnya mempunyai kuasa kerana dia boleh isukan *directive* kepada *Mayor, Mayor* mesti lulus.

Nombor dua, ini adalah satu perkara yang harus disiasat. Saya dapat tahu— bukan dapat tahulah, ini sudah lama. Dia ada apa yang dipanggil *special OSC meeting*. Ini ajaib. Di semua Malaysia, mana ada *special OSC*. OSC-OSC ada protokol di bawah KPKT di mana siapa duduk dan sebagainya, dia ada prosedur, mana ada OSC khas? Jika disepina dokumen berkenaan dengan semua kelulusan *special OSC*, didapati yang duduk sana adalah *Minister*. *Minister* duduk di *OSC meeting*.

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OSC adalah satu badan untuk meluluskan perintah pembangunan di mana duduk di atas badan itu adalah *technical department* daripada jabatan *ministry* yang lain, *maybe* JPS semua itu, yang saluran, JKR semua duduk sana. Biasanya dipengerusikan oleh Datuk Bandar dalam Kuala Lumpur dan di negeri-negeri lain di Malaysia, Datuk Bandar dan mungkin tiga atau empat ahli majlis. Biasanya *whip party*. *Whip party* ada duduk sanalah dalam satu badan. Akan tetapi di *FT* sahaja, ada perkataan ini yang dipanggil *special OSC*. Ini khas. So, mungkin perkara ini dapat dilihat bahawa ada dua badan. Sebenarnya badan di bawah undang-undang adalah OSC, tetapi dia ada OSC khas.

Tuan Wong Kah Woh: *Is this allowed under the law?*

Tuan Derek John Fernandez: Saya tidak pernah tengok perkataan OSC khas di mana-mana undang-undang di Malaysia. Saya tidak pernah tengok perkataan OSC khas.

Tuan Pengerusi: *Sorry. Itu for the Federal. But I think even the— if I am not mistaken, correct me if I am wrong.* Kalau setiap daerah pun, YDP kan yang mempengerusikan perkara ini?

Tuan Derek John Fernandez: *Yes. I said just now.* YDP Pengerusi atau Datuk Bandar. But *in the OSC khas, Minister* sebagai Pengerusi. Ini lah— ia macam Menteri Besar satu *state* duduk di OSC. Tidak pernah ada. Mungkin ada aduan di Melaka satu atau dua kes dan sebagainya tetapi memang tidak ada Menteri Besar duduk di *meeting* OSC kerajaan tempatan untuk kelulusan perintah pembangunan, tidak ada. Memang di Selangor, *100 percent* tidak ada. Sepuluh tahun saya di sana, Menteri Besar memang tak ada duduk *OSC Chairman*.

Tuan Wong Hon Wai: *Mr. Derek, about the TCPA, Town and Country Planning Act. There are two entities under the TCPA which are called State Planning Committee, as well as the Appeals Board.*

Tuan Derek John Fernandez: *Yes.*

Tuan Wong Hon Wai: *Is there such set up under DBKL?*

Tuan Derek John Fernandez: *No. There is an Appeals Board for DBKL, there is an Appeals Board. But there is no equivalent to a State Planning Committee there. That function is actually under Plan Malaysia. The State Planning Committee equivalent— should be Plan Malaysia untuk national planning sebenarnya. For that particular one, no, there is no equivalent to State Planning Committee.*

Tuan Wong Hon Wai: *So, the Appeals Board, is it effective? Is it running or...*

Tuan Derek John Fernandez: *Residents don't have the rights to go to the Appeals Board in Kuala Lumpur.*

Tuan Wong Hon Wai: *Why?*

Tuan Derek John Fernandez: *It is only for developers. That is what he said.*

Tuan Wong Hon Wai: *Oh. It's under which law that is saying that the...?*

Tuan Derek John Fernandez: *It's under the Federal Territory Planning Act 1982.*

Tuan Wong Hon Wai: *Resident doesn't have remedy to found...*

Tuan Derek John Fernandez: *No, there is no Appeals Board for residents. Okay. I am going to those details as to why. Okay? All right.*

Tuan Wong Kah Woh: *Mr. Derek, sorry.*

Tuan Derek John Fernandez: *Yes.*

Tuan Wong Kah Woh: *When we discussed about special OSC meeting, the term special OSC meeting was actually used by your good self or DBKL themselves?*

Tuan Derek John Fernandez: *DBKL. I have got the letter, the word 'special OSC'.*

Tuan Wong Kah Woh: *Okay.*

Tuan Derek John Fernandez: *They called it special OSC.*

Tuan Wong Kah Woh: *There is not only one special OSC being convened, but there are a lot. There was a lot.*

Tuan Derek John Fernandez: *As and when required. Yes.*

Tuan Wong Kah Woh: *That will be okay.*

Tuan Derek John Fernandez: *As and when required. So, within your power, you can ask for all, within the last eight years, minutes of special OSC meeting, attendances, and which cases are involved in special OSC approvals.*

Tuan Wong Kah Woh: *Okay, very well.*

Tuan Derek John Fernandez: *Because there is no— there is only one OSC. There is no such thing special.*

Tuan Wong Kah Woh: *Very well.*

Tuan Derek John Fernandez: *So, it is something you need to understand.*

Puan Nurul Izzah binti Anwar: *I just want to ask one follow up with regards to residents' rights untuk membantah atau memberikan pandangan. Ada disebut sebelumnya bawah Kaedah 5. Meaning when the development is being discussed and you invite residents to complaint or give their feedback, the Kaedah 5 is virtually useless, because it is not binding. Your thoughts?*

Tuan Derek John Fernandez: *So, apa yang ada proses untuk penglibatan penduduk dalam keputusan, hanya penduduk-penduduk berjiran diberi— pertama, penduduk berjiran diberi kesempatan untuk datang. So, bila saya ada satu bidang tanah itu, sebelah, dia ada rule lah. Kalau you 200 meter away, walaupun ini jalan akan mempunyai kesan kepada your enjoyment of your property, traffic, you tidak ada kuasa untuk membantah. Nombor satu.*

Nombor dua. Apabila you membuat bantahan, dia ada projek ini menukar cadangan pembinaan menukar ketumpatan daripada 10 orang seekar kepada 700 orang seekar, ini satu— 10 kepada 700, ini 70 kali ganda, dia ada satu notis sana. Nombor pertama, you akan merujuk kepada pelan tempatan, sama ada kepadatan yang dicadangkan adalah selaras dengan pelan. *Because*, apa yang penting ini, kerajaan anggap bahawa pelan ini sudah melalui proses bantahan di mana cadangan-cadangan maksima pembangunan telah ditetapkan melalui proses bantahan, proses untuk penglibatan orang awam. Jadi kita rujuk kepada buku ini. Jadi apabila dirujuk, boleh atau tidak. Kalau tidak, di Petaling Jaya dan di lain-lain PBT di Malaysia, kita tolak terus.

Tidak perlu kita layan *you*. *You* tidak boleh pinda pelan ini. Pelan ini ada proses sendiri. Ini macam *master plan*. *You* tidak boleh. (06:00)

Akan tetapi DBKL, dia tidak ada kan? *In 2018 only* sahaja dia *gazette*. So, masa itu—tadi *your question*— walaupun dia punya draf katakan ini lain, dia ada kuasa untuk tukar dia punya pembangunan. Jadi, dia panggil bantahan untuk berjiran sahaja. Selepas itu apabila *you* datang sebagai— saya ingat MP pun dah *ada experience*. *When you came there to participate, you asked for, “Can I see the traffic impact statement? What is the traffic that is expected to be generated from this development? How many cars? So, I can assess on how it can impact me”*, dia tidak benarkan dokumen itu. *They said no. When you asked them for any documents relating to the development, dia tak bagi pembantah. So, pembantah went there, they didn’t know what to say. Once the plan sudah tukar, walaupun they have not been given a chance to be heard, ataupun the draft plan has not been passed, number two, they are not—*

So, recently the Court of Appeal, mahkamah dalam kes Setiawangsa di Taman Tiara Titiwangsa yang lawan DBKL katakan, bila you panggil bantahan, orang minta dokumen yang berkenaan, you harus bagi. Bukan perkara yang begitu pelik lah. Ini kita praktis di PJ. Kalau you datang, kalau saya chair meeting, apa-apa you minta, kita bagi. You nak lantik konsultan, lantik. Datang, buat hujah. Nanti kita dapat keputusan yang the best. Kita tidak boleh bagi semua tetapi kita tengok what is the best based on...

Akan tetapi DBKL *didn’t practice this*. So, what is very sad was— so, one, you don’t get a very fair hearing. *The hearing is like a sham. In the case of Yayasan, in this particular case, case Titiwangsa— and I’ll explain the case to you. I went to DBKL and I told the Chairman, “Eh, look, this land is Yayasan’s land, you know. Your Mayor, your boss is the Director of Yayasan. Your Minister is a director. Now you are asking the residents to object. I don’t think you should hear this matter. Lebih baik you appoint maybe one MP or whatever to come and chair. Not correct for you to chair because you ada percanggahan kepentingan. How are you going to approve my project when your company got a commercial deal with somebody else to develop the land and already taken the deposit? So, I won’t get a fair hearing.”*

Number two, asked for document. No, all I don’t want to give. So, we then have to go to court. So, mahkamah katakan— mahkamah rayuan katakan, ini memang ada percanggahan kepentingan. Sebenarnya, you should know-lah— what is the problem? You can appoint— anybody here also can appoint, no problem. Any MP, whatever, not berkait dengan itu can. And also, you have to give document.

But what is disturbing, Ahli-ahli, under this current administration, they appealed the decision to the Federal Court. Selalu kita dapat alasan previous government, tetapi under this

administration, they don't agree with court decision and they have appealed to the Federal Court. One, no percanggahan kepentingan. Number two, don't give document. So, this has come out in the media, everything. So, the case is now pending before the— they applied to the Federal Court. That means they do not agree with what I support which is democratisation of local government. That means what is wrong with this? Nothing wrong. But this is appeared. So, okay, I'm going on. So, now, this is the problem you are facing....

Tuan Wong Kah Woh: Mr. Derek, let us go back to Yayasan Wilayah Persekutuan. Okay. Of course, we all now know that Yayasan is actually formed under Companies Act (SSM). Is there any trust deed between Yayasan Wilayah Persekutuan and DBKL? So, as to lay down—I won't say the—to lay down the job scope or the power scope for this Yayasan. Because earlier, my experience in Perak, there was one yayasan when we were in opposition, we always went—okay, look, this is actually a private company with profit. They manage to come out with certain documents which is something like trustee as to entrust, in this case might be the Minister and also the Mayor, to actually work within the power given within the framework. So, what is your take on that?

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Tuan Derek John Fernandez: Well, no document has been disclosed even when questions were asked in the Parliament. But I supposed there should be one. It cannot be just created out of the blue, one would expect that.

But the creation of such document does not necessarily guarantee the transparency and governance from the structural point of view. Now, I am going to the structural point of view now. This is where the problem lies.

Number (g), a private company set up under the SSM where both Federal Territory Minister and Mayor of DBKL are sitting. They are directors. Now, in company law, you tahu kan, directors have fiduciary duty to the company. Must act in the best interest of the company. Must act in the best interest.

So, the problem here now is the public land, and I think the Mayor has said, in many cases, they are given to Yayasan, there is no tender. Yayasan is given the land at value A. I will show you document afterwards. In some cases, Yayasan has no money to pay for the land. No money. Then, Yayasan entered into an arrangement with third-party developer.

In some cases, the third-party developer is paying the premium. It is paying—okay, from an accounting's points of view, governance? Has Yayasan given the best value to the government? You have to check the best value basis. So, if you can declare profit RM33 million, RM40 million using assets of DBKL or assets of Federal Government, that means the Federal

Government got less by RM33 million, RM40 million which is due to the Federal Government. Because what is your role in the joint venture— we will go through later— but you have made money.

Now the other thing is charity. Everybody likes to do charity. MPPJ, we buat charity, we had food bank and other things. In Federal Territory, there are bodies designed to provide charity for people in whole of Malaysia and also in Federal Territory. For instances, you got the ministry in charge of welfare. That is the Federal Ministry in charge of welfare. Even DBKL can do welfare themselves. They can set up in the annual budget at allocation of X million to help homeless, help— there is no need to have a private company to carry out this function. Why would you want to? When— you can get more money in fact if you do yourself.

In fact, you can get RM33 million more, I think on their account of profit and you can use that even better. Why must pass it on for extra overheads? You got enough of staff. So, we need to look at this structure. Why do you do that? There is Federal Ministry which is set up to handle this matter. So, mungkin this can be addressed.

So, we have this company then gave to third-party who then applied. Now, this is the problem I have. You have a fiduciary duty. Datuk Bandar sits in the Yayasan tapi bila perintah kebenaran dipohon, you duduk sana dan lulus. So, bila resident hendak bantah, katakan ini plot ratio enam terlalu tinggi, adakah you benar-benar akan mendengar and consider? You cannot because you have a private agreement to say the plot ratio should be at six. You'll get paid so much.

So, this is very clear. Is not very difficult to understand. You should not sit there. You can't because you have so many different duties. Duty to the resident, duty under Akta Perancang Bandar dan Desa to fairly consider an objection. Then, you have power as the minister. Then, you sit in this company. So, this is the problem and it leads to a lot of complication.

Tuan Wong Chen: *Derek, I understand your structural conflict of interest situation there. But I want to know the shareholder of this Yayasan is definitely the Federal Government, right?*

Tuan Derek John Fernandez: *But it is limited by guarantee. That does not require shareholders. It is a company limited by guarantee. Guaranteed by the Federal Government.*

Tuan Wong Chen: *Guaranteed by the Federal Government?*

Tuan Derek John Fernandez: *I do not know, I am not seeing the document but it is a company limited by guarantee. On the public search, the guarantee is not disclosed who is the guarantor. I would assume it should be...*

Tuan Wong Chen: *It should be the Federal Government.*

Tuan Derek John Fernandez: *It should be.*

Tuan Wong Chen: *So, is there any account published?*

Tuan Derek John Fernandez: *No, no.*

Tuan Wong Chen: *Absolutely nothing, right?*

Tuan Derek John Fernandez: *Nothing. That is not subject to Auditor General's auditing.*

Tuan Wong Chen: *The Auditor General office is here.*

Tuan Derek John Fernandez: *They can confirm.*

Tuan Wong Chen: *Any comment?*

Puan Yusnani binti Zakaria [Pengarah Bahagian Audit Prestasi I, Jabatan Audit Negara]: Kalau mengikut kita punya akta, memang kita boleh mengaudit CLBG dan kita akan wartakan. Akan tetapi, *for this, I am not sure because* kalau bawah DBKL— kalau badan berkanun memang kita akan ambil kiralah tapi *for DBKL, I am not sure.*

Tuan Derek John Fernandez: *Ini SSM di bawah....*

Puan Yusnani binti Zakaria: Kita tahu tetapi *I am not sure whether—* kita ada 700...
[Disampuk] Ya, banyak *companies*. Kita kena *check*.

Tuan Derek John Fernandez: *You need to check on that but I am aware that it is not subject to that.*

Tuan Wong Chen: *No, we need to know. Chairman, I think we need to know whether this company, this Yayasan is actually made a lot of money. How much they made?*

Tuan Derek John Fernandez: *I got their accounts here on SSM search...*

Tuan Wong Chen: *Oh, you got the account?*

Tuan Derek John Fernandez: *Yeah, I'll show it to you in a moment. These are the official accounts under the SSM when you have to file it with the Companies Commission and they are disclosed on a search. So that is all what we have got. No more details on that.*

Okey, sekarang saya hendak masuk sedikit tentang *KL Plan*. Tadi ada *a lot of questions*. So, *let's go through the KL Plan*.

So, first of all, the Federal Territory Planning Act is 1982, the Town and Planning Act 1976. So, it is supposed to govern all the planning and development control in the Federal Territory. Ini dia punya hasratnya.

And important when I talk about governed planning and development control, I explain to you, it affects land value. Very important that the moment planning and development control is regulated, the price of land is immediately affected and the price of sustainable development.

Now, apa maksud saya itu? Kalau you ada hutan, macam mana you nilai hutan? Bila pokok ditebang, old tree, 180 years old, it cannot grow back. So, your green space, your open

space, you cannot just value and say RM50. You cannot RM50 because at RM50 per square foot per 100, you can never buy back a jungle.

So, when you look at valuation, it is very important to study key asset or infrastructure asset. You cannot just— like open space green lung, you cannot just put a value like that because it is irreplaceable. Bila tidak boleh diganti, it cannot be valued at what it has been done— so, anyway, it affects land value. That is why I say land value and sustainable development. Apa yang dipanggil pembangunan mampan dan sebagainya. You mesti ada ratio. Ratio residential, ratio commercial, ratio green space, padang, sekolah, masjid dan sebagainya. Ini adalah pembangunan mampan.

So, this document is supposed to set the pembangunan mampan and also set the valuation from the commercial perspective and the value from the non-commercial perspective. That is the public infrastructure, good quality of air, good quality of water, flood mitigation. All these kinds of stuff you cannot just quantify in money because some of the land infrastructure cannot be replaced.

Datuk Seri Haji Ahmad bin Haji Hamzah [Jasin]: Tuan Derek, just a minute. I just want to find out whether this Yayasan Wilayah Persekutuan is a company which is related to the government. Actually, there is nothing— if the Minister or the Mayor were to sit on this, it is okay.

Tuan Derek John Fernandez: Yeah, but there is a question. We do not know whether...

Datuk Seri Haji Ahmad bin Haji Hamzah: In his capacity. Because, this one was set up by the government. So, what is wrong with that?

Tuan Derek John Fernandez: Okay, so, can I explain why? Nothing wrong with a government setting up a company to do business. That is not the issue of the body itself.

The problem is the business you are doing requires you to make decisions impartially approving development which people may want to object against which the law says they can object. So, when the law says you can object, how am I going to impartially carry out my function?

Okay, I give you misalan. A company formed by the government. Most of the companies formed by the government, the approving authority doesn't sit there. They don't sit there. Macam Yayasan Negeri Selangor kah, Yayasan Perak semua itu, kalau Menteri Besar chairman, dia tidak duduk dalam OSC, dia tidak duduk dalam MPPJ, dia tidak lulus perintah pembangunan. Itu serah kepada proses undang-undang.

Masalah di KL sahaja, because of the akta, the Minister can order the Mayor and then the Minister also sits on the private company, you call a government company. So, when somebody objects to some projects, katakan ini padang jangan buat ini padang, you tidak boleh buat keputusan yang bebas. You cannot address your mind because, you know, you signed the

agreement three months ago, you took a deposit on the development on this land, so, how are you going to— even if he agreed with you that you are right that this padang should not be developed, he cannot stop it because he is also on a company as a director who agreed to this project. So, itu yang masalahnya. Bukan dia punya body tapi orang yang duduk di dalam badan tersebut.

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Datuk Seri Haji Ahmad bin Haji Hamzah: *I was formerly from the state and the Chief Minister or the Menteri Besar sits on OSC. There's nothing wrong.*

Tuan Derek John Fernandez: *Not, not— which state is this?*

Datuk Seri Haji Ahmad bin Haji Hamzah: *Because now in his capacity, he has no interest. Even if I am sitting on the Yayasan Wilayah Persekutuan on my capacity as the Chief Minister or the Minister, I don't have any interest in it.*

Tuan Derek John Fernandez: *No, it is not about interest. It is about you unable to make a decision which is impartial because you have already bounded yourself in contract to somebody else. Because, under the act, when you make a planning application, you have the right to be heard. Apa maksudnya right to be heard? So, I present my case. Macam hakim. You jadi hakim dalam kes bila ada perintah pembangunan yang dipohon dari DBKL, DBKL of— Datuk Bandar jadi macam hakim. Dia hendak buat bolehkah tidak boleh, tetapi dia tidak boleh jadi hakim kerana dia duduk di syarikat yang ada business yakni commercial business dengan syarikat yang lain di mana projek ini patut diluluskan. Itu yang isunya.*

Okay. Secondly, OSC is PBT level. Dia ada PBT. So, di Selangor memang tidak ada langsung Menteri Besar duduk dalam OSC. Dia duduk state planning. Dia duduk lain tempat tetapi di dalam OSC— dalam kes yang Yang Berhormat Lim Guan Eng— jadi isu kan?— di mana di Penang juga dia ada jadi isu sama ada di-state planning level— so memang that was sorted out, that was no problem. The Minister didn't sit in the OSC. He never sits in the PBT. He sat in the state planning.

Tuan Pengerusi: *Okay, I think saya akan minta Yang Berhormat Permatang Pauh and then after that— saya rasa we'll just focus kepada presentation.*

Tuan Derek John Fernandez: *Ya, sorry. They are asking me some questions.*

Tuan Pengerusi: *Then nanti kemudian PAC akan bermesyuarat dan kita akan buat keputusan mengenai perkara ini.*

Tuan Derek John Fernandez: *Okay. Thank you. So, the local plan...*

Puan Nurul Izzah binti Anwar: *Sedikit sahaja kerana saya hendak maklumkan antara bidang kuasa yang kita berikan untuk siasat termasuklah dari segi status tanah Rimba Kiara.*

Tanah Rimba Kiara penting kerana *joint venture* melibatkan mereka dalam Yayasan Wilayah Persekutuan bersama syarikat komersial. Maksudnya, tanah yang digazet untuk kegunaan awam sekarang melibatkan *conflict of interest* oleh mereka yang dilihat sepatutnya menjaga Kuala Lumpur itu dan mengikuti zon-zon yang ditetapkan.

So, selagi kita masuk skop, *I think it is quite clear. That's why* kadang-kadang Yayasan Wilayah Persekutuan ini tidak membantu *because you have to be there to be fair* kepada residents, *you have to be fair to commercial entities and you have to be fair to developers. So, selagi you bias towards developers, Yang Berhormat Jasin, that is why it is problematic. So, I hope that we can just stick to the thing but to just showcase how the conflict will emerge-lah.*

Tuan Derek John Fernandez: Okey. *Saya now explain a little bit about the planning. A little bit through.*

Now, there are two plans. One is called the structured plan. Memang ada pelan struktur negeri Selangor, pelan struktur *Penang* dan sebagainya. Ini adalah pelan— satu buku— di mana ada dasar kerajaan dan mungkin ini datang daripada *national plan* di peringkat *Federal*. Sama ada berapa *green space, affordable* mampu milik polisi *for the* kerajaan, *water, river*, dia ada dasar, *general*. Dia banyak *general*.

Lepas itu, undang-undang katakan selepas ini pelan *general*— dia panggil pelan struktur. Struktur negeri untuk negeri dan struktur untuk Kuala Lumpur, dia ada pelan struktur. Bila pelan ini dah lulus, kita ada pelan yang lebih *detail* dipanggil pelan tempatan atau *local plan*.

Pelan tempatan, kalau saya bagi misalannya, saya bagi *example* macam *your house*. *When you build a house— supposing in this room, we have a policy we should only allow maximum of how many MPs here. Okay, all table every three person have to have* macam itu. So, you ada dasar. *General* dasar. Lepas itu, *we have the detailed plan. You are sitting here, you are sitting here, you are sitting here, the chair is here and it is very detailed.* So kalau 100 orang hendak masuk sini, kita katakan tiada. Kita pelan tidak benarkan 100. *You* pergi bilik yang lain. So, ini macam *local plan* sama juga. Dia *calculate how many populations, how much intensity* semua itu dan *they stick to the plan*.

So, the plan— I go through. It can be created by— so you can do with the structured plan. Ini *structure is the general one and the local one. We go to the local because you want to know that. So, this is the history. In 2004— this answers your question— the structured plan was passed under section 7 of the Federal Territory Planning Act. It was passed and it was gazetted and it contains the vision, policy, dasar for the next 10 years, 15 years depending on the planning period. All countries got. Just like your house, you have an architectural plan. You know where your room is and when you want to do that, you have to submit plan.*

Okay, now, this is the problem starts here. The draft KL Plan— ini yang local plan, bukan structure plan. Dia disediakan dalam Mei 2008 to Ogos 2008. Dia dah wujud pelan ini untuk tahun 2020. Tahun 2020 bukan dia expire. Itu masa merancang. Kita merancang penduduk datang KL up to 2020. Kalau tahun 2020, kita boleh review. Ini bukan bermaksud tahun 2020 ini plan dah habis. Dia tidak habis. Akan tetapi, ini period of planning. We are planning only for the next 10 years. So, May 2008 to August 2008, they sediakan ini. [Merujuk kepada slaid pembentangan] So, you baca ini. Kalau you— very nice, a lot of things. So, it has been prepared, must be consistent with the structure plan.

So, nombor satu, this plan must translate national policy. National policy, we have to put in here. Macam mana ekonomi negara, how we control about environment impact of a warming— all these things dia ada dasar kerajaan. Dia studied under Federal planning unit. Okay, under Federal unit dia studied, they formed a national physical plan dan ini diterjemahkan dalam pelan struktur, lepas itu diterjemahkan dalam ini pelan tempatan. Okay.

So, it contains the proposal for DBKL for sustainable development. Ini penting. The word sustainable development ini very important. If you don't follow the plan, you are not sustainable. It is as simple as that. Ia bukan kata I want development, don't want development. No. The development balance between the acts is in the plan. You don't follow the plan; you are not sustainable. It is simple. There is no confusion here. You cannot say I don't follow the plan then I am sustainable because ini adalah macam agreement between the people, the government, all the stakeholders and finally this is the draft.

So, next one. So, people were called for hearing. Semua public call. Lebih kurang RM15 juta dibelanja, the meeting call. So, May 2008 to August 2009, DBKL exhibited the plans. So, dibuat tengok ini— ini actual ya. Go there and look at the plan and see how they are going to change, whatever, and it contains the proposal for sustainable development and the public can object. You boleh buat cadangan, you boleh buat bantahan, you boleh minta pendengaran. Ini beribu-ribu orang. Ini bukan seorang sahaja. Semua satu penduduk.

Okey, next one. May 2008 to 2009, same period, the public gave their views. So, tengok ini berapa banyak orang. [Merujuk kepada slaid pembentangan] Every day. It went on for one month, extended for another month. So, public gave all their objections secara bertulis dan sebagainya. And after that, ada panel duduk macam ini. Panel yang duduk, dia dengar, dia soal, dia bahas dan dia buat rekomendasi. "Okey, ini dipinda, ini kita tidak sokong. Ini you punya objection tidak ada asas. Ini ada asas mahu tukar. Ini pelik. Ini ada typing error dan sebagainya." Dia ada proses.

So, JKPPA— *that is the jawatankuasa* untuk mendengar bantahan— dia *submit* ini kepada Datuk Bandar *because* Datuk Bandar di bawah akta ini, *he approved the plan to be passed by the Minister* pada 20 Oktober 2009. So daripada tahun 2009, dah habis ini. Semua proses dah habis, dah *submit*. So, lepas itu tidak ada *display for public*. After 20 Oktober, *no more objection*. Dia tidak ada *objection process*. Ini proses tutup *already*.

Okey, *next one*. Akan tetapi, *despite it* dah sedia, *the Menteri didn't want to pass*. And then, *they displayed one more time, not for objection but to show what was recommended by the JKPPA and this was— have one day in November 2010. They just showed only what the recommendations were but there was no objection. What the recommendations were and what they wanted to change on the recommendation also both involved and they never had any process and no notice and nothing like that and public* tidak boleh bantah kah tidak bantah. *That was only one day they did*.

Tuan Pengerusi: *When you said the Minister did not pass itu, dia yang kata tak nak luluskan kah ataupun assumption kah atau pun orang lain bagi tahu?*

Tuan Derek John Fernandez: *Ya. No, no. I think statement* ada buat di surat khabar di mana *Minister* kata dia kata dia tidak *pass...*

Tuan Pengerusi: *Ada statement dalam surah khabar? Bila itu statement itu?*

Tuan Derek John Fernandez: *Mungkin last year. Sebelum pilihan raya dia dah buat. Pilihan raya.*

Tuan Pengerusi: *Sebelum PRU?*

Tuan Derek John Fernandez: *Ya, you can search it up. Dia katakan, "Oh, because things are changing, you know, if I pass things are too rigid" dan sebagainya. Dia bagi banyak alasan.*

Tuan Pengerusi: *Akan tetapi memang dia katalah?*

Tuan Derek John Fernandez: *Ya.*

Tuan Pengerusi: *Dia kata sendiri? Bukannya orang lain yang kata ya?*

Tuan Derek John Fernandez: *Ya, sendiri.*

Tuan Pengerusi: *Sendiri kata.*

Tuan Derek John Fernandez: *Okey. Sendiri. You can tanya Datuk Bandarlah. Datuk Bandar will know-lah. Datuk Bandar 100 percent will tell you who didn't pass-lah. Okey.*

All right. Dia dah buat. So, media semasa, you boleh buat search. Dia bagi justifikasi. Dia katakan kalau saya pass, boleh salah guna kuasa— banyaklah dia bagi alasan. Ada debate lah dekat meja. Okey.

So, ini RM15 juta lebih dah belanja dan dah habis. *So, the gazette was delayed for tujuh tahun. Tujuh tahun tidak pass. So, dalam masa 7 tahun— I think the Yang Berhormat just now asked the question.* Dalam masa tujuh tahun ini, di mana draf tidak diluluskan, apa berlaku?

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Pada masa itu, orang pohon untuk perintah pembangunan tetapi pelan yang diluluskan, tetapi tidak digazet, tidak diikuti. Pembangunan yang jauh berbeza daripada pelan itu dibenarkan di bawah Akta (Perancangan) Wilayah Persekutuan 1982 atas alasan tidak ada pelan lagi yang diluluskan. *So, dia buat macam itu.*

Now, ini bukan saya sahaja kata, di belakang pelan yang baru diluluskan, ada senarai 273 kes lebih kurang di bawah sini sebagai addendum di mana disenaraikan secara terperinci mana-mana perintah pembangunan yang telah diluluskan dalam tujuh tahun ini yang tidak ikut pelan yang diluluskan, dia senaraikanlah di bawah ini.

Juga, jawatankuasa ini boleh merujuk kepada MP Kuala Lumpur di mana satu senarai sulit juga telah diedarkan di mana di dalamnya dinyatakan lagi tambahan kepada pelan ini, di mana pindaan dibuat kepada pelan walaupun masa itu draf tidak diluluskan. *So, memang ada banyak kes di mana apa yang diluluskan bercanggah dengan pelan yang telah diluluskan tetapi belum digazet dan pindaan ini dibuat di dalam pelan yang baharu. Jadi, pelan yang baharu ini diwarnakan dan semua itu ditukar walaupun tidak ada proses bantahan.*

So, dalam pada itu, development orders were issued by DBKL that memang bercanggah dengan pelan ini. Okey. So, now, on 30th October 2018 under this government, this plan has been passed. Akan tetapi bila kita buka pelan, kita pelik. Apa yang diwarnakan dalam pelan ini tidak seperti yang diluluskan tetapi telah diwarnakan semula. *Now, saya setuju you boleh masuk addendum di mana ada perbezaan yang disebabkan oleh dalam tujuh tahun itu tetapi perbezaan ini tidak boleh diwarnakan semula dalam pelan menjadi undang-undang daripada segi pembangunan.*

Apabila diwarnakan semula, ini bermaksud bila ada permohonan untuk pembangunan, dia akan ikut apa yang dimasukkan dalam addendum. *They will look at what is in the addendum and that means you already cannot object because it is already become— so, this is the problem. So, he passed it. At the material time, yang problem itu, Minister pada masa itu also chairman, you katakan yayasan, and in this plan, 12 lands are under yayasan too. Originally dia tidak change, now it is already changed. So, memang ada isu. Okay, next one.*

Tuan Wong Kah Woh: *Derek, the slide before.*

Tuan Derek John Fernandez: *Before.*

Tuan Wong Kah Woh: *Okay, the note here says is that the plan was actually gazetted but it is materially different from what was passed by the public. What do you mean by passed by the public? You see, of course, I...*

Tuan Derek John Fernandez: *Okay, the correct word is went through the public objection process and was approved by the hearing committee. The recommendations by the hearing committee. That is what I meant.*

Tuan Wong Kah Woh: *Okay.*

Tuan Pengerusi: *Itu kena ubahlah kan?*

Tuan Derek John Fernandez: *Ya, okay. Tukar.*

Tuan Wong Kah Woh: *Ubah.*

Tuan Pengerusi: *Ubah, ubah, ubah.*

Tuan Derek John Fernandez: *So, retype the word. Not pass.*

Tuan Wong Kah Woh: *So, in that case, Derek...*

Tuan Derek John Fernandez: *Had gone through the public objection process.*

Tuan Pengerusi: *Yes, that's it.*

Tuan Wong Kah Woh: *Okay, if it had gone through the public objection process and the conclusion was actually done by the committee, what is the name of the committee?*

Tuan Derek John Fernandez: *Jawatankuasa Pendengaran Bantahan.*

Tuan Wong Kah Woh: *Okey, Jawatankuasa Pendengaran. So, under the law, does the Minister has a power or does the Mayor has a power to actually override this Jawatankuasa?*

Tuan Derek John Fernandez: *Okay, the law says this. They can do that only if there is in relation to the objection. That means, if there is an objection— let's say this padanglah, to give example. This padang and DBKL put in the plan padang bola sepak— tanah kerajaan ya, bukan tanah swasta. Nobody objects. Who want to object padang bola sepak tanah kerajaan? So, objection hearing kosonglah, tak ada apa kan? So, the plan now goes to the Minister, padang bola sepak. He legally cannot say now this one jadi commercial. He got no basis to do that.*

But if it was padang bola sepak tanah datuk, datuk bantah. "Eh, no. This my padang, my land. You cannot do as a padang." Then, the recommendation of the planning committee says, "No, kita kekalkan sebagai padang". You bagi compensation kah apa, you kekalkan. Masa itu datang kepada Minister, dia katakan, "No, saya boleh pinda, saya keep back as original".

Tuan Wong Kah Woh: *Only on the issues where there is objection?*

Tuan Derek John Fernandez: *It is must directly related. That's what the section says. Now, it also doesn't explain seven years.*

Tuan Wong Kah Woh: *Okay, which section are we talking about? Maybe just for record then later we can refer to it. Show the section.*

Tuan Derek John Fernandez: *Okay, Federal Territory (Planning) Act.*

Tuan Wong Kah Woh: *Ya, okay.*

Tuan Derek John Fernandez: *Can I go and I just telling you that section?*

Tuan Wong Kah Woh: *Okay. Thank you, thank you.*

Tuan Derek John Fernandez: *I got to have the— I'll give it to you. Section 13. I will give to you in a moment.*

So, the change can only be in relation to an objection. Okay? This principal we call 'back door amendment'. In Petaling Jaya, we do not allow back door amendment. That means if I propose— we are even more extreme. I just give you the governance. If I propose A and if the objector— the non-objector. If I want to change it back to something with higher intensity, I got to display one more time. Okay? We cannot just change it just because nobody objected, then I change it as I like. No. Okay, we got that deprive right to you, okay. So, it was passed. So, can you change the word "material different" to "had gone through public"? Okay, dah tukar perkataannya.

Tuan Pengerusi: *Thank you.*

Tuan Wong Chen: *Can I ask, Derek? This KLCP that was gazetted, did the Minister or the Mayor explained what basis for all the material differences?*

Tuan Derek John Fernandez: *Legacy of the past was the current administration's reply. "Oh, this one all already have been done, we need to move on with life." "The project already— some of them done", and a variety of reasons.*

Tuan Wong Hon Wai: *Ada sudah buat?*

Tuan Derek John Fernandez: *Oh, that one all before already. What to do? So, now we just carry on, we start afresh tetapi afresh itu tidak ada lagi tanah. So, we did inform him that is not the approach.*

Now, I give you the solution to the problem. Okay, we understand some people like to build building on it, some people like to sell. Those cases, sure, we cannot ask you to break your building down, we understand. Never mind, we pass the original one but we now propose an amendment, we go through a public process of the amendment.

With those which have already been built and sold, we have to change it for what it is but we will accommodate with the infrastructure. We katakan okay, so sekarang we got loss open space, so other areas we look, we try to mitigate an infrastructure. For those that have not been built or whatever, no problem. You can kekalkan, there is no issue. Okay? Especially when it is

a government's land and is a JV with government and all you did was to pay the premium. That's it.

So, you need to go through the process. You got to be open with the public. This is what was supposed to be passed, this has happened, we are now going to amend it, what we want to hear from you. So, that process of transparency, that process of their right to be heard is preserved because that is what is meant by democratisation of local government, not just in a local government election ya.

Tuan Wong Chen: So, that was done?

Tuan Derek John Fernandez: Of course it is not done. That is why we have this problem today.

Tuan Wong Chen: Now, did any of you— yourself included— or NGOs or people who are concerned, did they do any study to show how many pieces of lands were, you know— it is already done, we understand, you just redrawn, I suppose you to recolor, if they have already built a structure there, right?

Tuan Derek John Fernandez: Ya.

Tuan Wong Chen: Those that they haven't build any structure, did they colour them differently?

Tuan Derek John Fernandez: They coloured them back to the current one even though they didn't build the structure. Tiara Titiwangsa is one of them like what YB had said. Taman Tiara Titiwangsa is one of them. Titiwangsa is going to court. That is also another similar case. Nothing is being built. In some cases, development order was not issued too but they recoloured it. I'll go through the examples afterwards.

Tuan Wong Chen: Okay. I mean, you cited two examples. Is that a lot?

Tuan Derek John Fernandez: There are 273 here. So, some are built, some are not built. You have to go through the whole audit on this. And there is another ...

Tuan Wong Chen: There is another list of two hundred plus that used...?

Tuan Derek John Fernandez: Yes. Yang Berhormat, four hundred over cases.

Tuan Wong Chen: But that means no sense. I mean, why...

Tuan Derek John Fernandez: Ya. Why? Why is because— you want me to be honest with you?

Tuan Wong Chen: Yes, yes. Please.

Tuan Derek John Fernandez: When the plan was supposed to be passed, supposedly after going through the public objection, somebody looked at the land there and said, "Look, this is a valuable land. So, don't pass the land". And then, lands were transacted. So, if you do a

search on all these things, you'll find people got development orders, land was alienated— if you look at the park, the park was alienated after the draft of KL Plan. That means it was a government's land before. After it was supposed to be passed, suddenly this was alienated. This one the whole topic today— alienation of government's land.

So, they already paid for it. Then the agreement says conditional upon development order. Development orders are issued, money has been transacted and then now, "Eh, I am stuck with the plan. Because the plan says it is a park, it is supposed to say it is a park. So, I just changed the plan." This was done in padang PKNS case. If you know the famous case in Petaling Jaya, padang PKNS was a padang.

Tuan Wong Chen: *That is my area.*

Tuan Derek John Fernandez: *Thank you.*

Tuan Wong Chen: *[Ketawa]*

Tuan Derek John Fernandez: *So, you are fully aware, YB?*

Tuan Wong Chen: *I am fully aware. I am very happy, I want to put on record, we actually resolved the matter. Finally, PKNS withdrew the thing.*

Tuan Derek John Fernandez: *Yes, that is right.*

Tuan Wong Chen: *So, thank you Derek on that. I mean we work together on that issue for quite sometimes.*

Tuan Derek John Fernandez: *Okay, thank you.*

Tuan Wong Kah Woh: *What happen in PKNS, Derek?*

Tuan Derek John Fernandez: *Same story— colouring. You see, I told my children, the best thing you can do in life is learn to do colouring because you can be a very rich man. [Ketawa]*

Tuan Wong Kah Woh: *[Bercakap tanpa menggunakan pembesar suara]*

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Tuan Derek John Fernandez: *All you need to influence people in power is to do the colouring, okay.*

So, the thing was a park. It was supposed to be a park and the state authority at past, the plan was supposed to be a park but not gazetted yet, and between the date of passing and the date of gazetting, colour pencil came out and change the colour. Not only the changes of the colour came out, they printed a book, a fraudulent book and sold it to all the pemaju that these lands are all changed. And then, I am the one who revealed it at the full board meeting because I was sitting there and I have one state planning, Jabatan Perancang Bandar dan Desa, one of my own planners.

So, what is the guideline for SOHO apartment, how many car parks per unit? This one answered A, this one answered B. Eh, pelik. You planner sama, degree sama tapi jawapan berbeza. You pandu apa? Dia pandu buku A, dia pandu buku B, baru kita tahu. Ini perkara sudah jadi. Ini sudah masuk SELCAT lah. *SELCAT finding was gross negligence amounting to dereliction of duty. The plan was cancelled immediately. The day itself the Mayor announced it is a fraud, wrong plan and batal.*

Tuan Wong Chen: *Nobody has been charged kah?*

Tuan Derek John Fernandez: *Nobody has been charged. Some are still working there. Some even have been promoted. Okay.*

Tuan Wong Chen: *Some have been promoted to Mayor status... [Ketawa]*

Tuan Derek John Fernandez: *Okay, so this is the SSM search. So, I want, gentlemen, you please read it. This is under SSM. It is a company limited by guarantee and here we have the directors who are sitting on the company and this is on both sides lah. [Merujuk kepada slaid pembentangan] Okay, this is before as of 14th January 2019. It was under the old Minister and the old Mayor. And then the next one, this is the current one with the current Minister and the current Mayor. [Merujuk kepada slaid pembentangan]*

So, there is no issue with a government forming a company. There is no issue there. But it is a type of activity that the company does and whether those activities are done without a conflict of interest. That is the issue.

If you look at the funding of the company, it is from billboard, it is from parking. It is a DBKL's billboard money and parking. It is from the development of lands within Kuala Lumpur. Okay, three things. It is from aset DBKL. So, the asset of DBKL belongs to whom? It is important. You said government but who paid for that asset? So, this is the revenue of DBKL. So, yes, if we do other activities, fine, there is no issue.

So, YB, in fact I am not really wrong because now the CEO said they don't want to go into land anymore. Betul. Dia ada buat announcement. Dia kata memang ada problem. So, baru-baru ini Yayasan Wilayah Persekutuan dia ada buat announcement dia tidak mahu buat tanah lagi. Dia ada kata dalam media. Because, dia ini pun tahu memang ada isu kerana dia memberi kelulusan dalam penggunaan tanah dan mungkin tidak boleh duduk sana.

All right, next. Tapi ini bukan unit untuk FT ya. Saya mahu jelaslah. PJ pun ada macam itu. Bila saya masuk tahun 2008, billboard ada isu. Kita dapat RM700,000 satu tahun untuk billboard walaupun tanah kerajaan, walaupun tapak komersial dan ada RM2 juta derma diberi kepada football club, MBPJ football club. Football club pun sama, YB. Datuk Bandar duduk sana, duduk di football club. Walau bagaimanapun, ROS tidak— the society— tidak mahu bagi akaun

kepada kita. Dia kata MBPJ tidak ada *local standi* untuk pohon kerana *this is a society*. *Only member* boleh buat macam itu.

So, lepas itu kes, kita potong, kita buat semula di mana bila *you* sewa aset kerajaan, *you* mesti bagi *fair return* kepada kerajaan untuk aset komersial lah. Aset untuk tidak komersial tidak payah macam itu. Tapi komersial, sekarang kita kutip RM15 juta satu tahun *clean*. Daripada RM700,000, RM15 juta saja dengan *billboard*. Lagi itu *football club case*, mereka sudah lawan kita, katakan— samalah, dia ada *agreement*, saya sudah bagi *donate*. Dia kalah dekat Mahkamah Persekutuan bahawa memang *you* tidak boleh buat macam itu. So, mungkin ada— bukan saja KL, semua tempat tapi ada sikit-sikitlah. Okey.

So ini Yayasan Wilayah Persekutuan, dia *owner joint venture partner* 11 tanah di *KL City Plan*. *Many of which zoning* dan dia punya *density* tidak bercanggah dengan draf. Biasanya *it is a public amenity land* lah macam padang, dewan. Biasanya tanah ini yang diberi milik. Bukan tanah yang sudah tukar dan sebagainya. *Some of the lands have development orders*, some tiada. Dalam kes Kiara ada. Dalam kes Titiwangsa yang saya tunjuk *details* tidak ada *development order* lagi tapi telah diwarna. Okey. *All right*.

So, ini yang didedahkan 12 tanah. [Merujuk kepada *slaid pembentangan*] Daripada Segambut ada. *That is why* Segambut semua— kemudian Titiwangsa. Ada banyaklah. Bukit Bintang kecil pun ada sana yang itu. Lepas itu 12 sana. Lagi dia ada tempat letak kereta dan sebagainya, dia ada *billboard* dan sebagainya. Ini sumbangan kewanganlah. Saya tidak mahu banyak dengan syarikat. *Saya just tell you the problem with the entity*.

So, the *KL City Plan* akhirnya 12 November dia sudah gazet di bawah kerajaan yang baharu ini dan ini adalah *the differences* lah. [Merujuk kepada *slaid pembentangan*] So, ini adalah perkara yang penting. Apa yang masuk dalam *KL City Plan*...

Tuan Wong Kah Woh: Derek, *back to Yayasan issue*, Yayasan Wilayah Persekutuan. *I think the point that you are trying to make is there would be a huge conflict of interest where Mayor and Minister are sitting inside. But if we are to look at the manner of management overall in the state government like in Perak or in Penang, we have this Menteri Besar Incorporated where they got alienated lands for development, for mining or what so ever. Even in Penang we have Chief Minister Incorporation. Of course, being in the opposition, we always say that there is a conflict of interest. But I think the key thing that we should look into is what is the source of power or source of mandate to this, in this case, to the Minister and also to the Mayor as to how far they can work and how far they can go.*

In my view is, it is not simply that if the land is to be alienated to Yayasan Wilayah Persekutuan and any proceedings later will be in a conflict, because at the end of the day, if the

land is not alienated to Yayasan, the development will be undertaken by DBKL themselves. Yayasan is only— to me, Yayasan is only a machinery.

Tuan Derek John Fernandez: *That is why you are wrong. [Bercakap tanpa menggunakan pembesar suara] Because, the land is zoned as a park. So, whether you used MBI, whether you used M test, whether you used EXCO, you are alienating land that is the park. So, you cannot now approve the land because it is in the local plan. Section 18 says no development is inconsistent with the local plan. You could never have alienated this land to any GLC in contravention of the plan that has been passed and gazetted. That is the issue, number one.*

Number two, MBI has applied to Petaling Jaya Council— they can apply. PKNS applies all the time, they get rejected because of the level of impartiality or the MB does not sit there. The EXCO does not sit in the deciding authority. So, the approving authority can say, okay, let's— for instance, KIDEX. KIDEX was the classic example. KIDEX applied for— they got the approval from the federal, they applied for planning approval from MBPJ. It was supported by the state government. When they came before the city council, the city council just said simple thing. This is the plan for Petaling Jaya, there is no KIDEX in here— it is elevated. If you want to put it in, you need to amend the plan. They rejected it. So, that is the level of governance. The respect of the powers.

That is why you can alienate government's land to state entity for doing business, you cannot do that in contravention of the processes of the law and in particular the very law you passed, because all of these are passed in the state by the state authority. So, you give a set of law to say this is the playground like padang PKNS, at the same time that land that is given to PKNS with the joint venture with the developer and you expect the development order to be approved for, let's say, shop houses.

Tuan Wong Kah Woh: *Okay, I agree with you on the point of we cannot do something that is in contravention with the law. That is definitely very well. But, of course...*

Tuan Pengerusi: *Saya rasa yang itu pun semua kita setuju. We setuju on that fact.*

Tuan Wong Kah Woh: *We cannot be saying by outright when you have Yayasan and you sit in the board, there will be a conflict of interest. I think we shouldn't be reaching a conclusion on that.*

Tuan Derek John Fernandez: *The conflict is in the decision-making power where there is a planning approval application. I do not...*

Tuan Wong Kah Woh: *This point I agree with you.*

Tuan Derek John Fernandez: *No. That is the whole issue.*

Tuan Wong Kah Woh: *This point I agree.*

Tuan Derek John Fernandez: *That is the whole basis of the conflict because you are approving the development order. If you are not approving...*

Tuan Wong Kah Woh: *If we are talking about development order, yes.*

Tuan Derek John Fernandez: *Yes, that is why we are here. Because it ties to the value of land. Okay, all right. So...*

Datuk Seri Haji Ahmad bin Haji Hamzah: *Derek.*

Tuan Derek John Fernandez: *And then, it does not confirm even with the structured plan. That means many of these do not confirm with the structured plan. Sorry.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *It is a common thing that is actually happening in all state. For that matter, take it what Selangor is doing. See ya, PKNS actually alienated many lands by the state government who is actually managed by the Menteri Besar. Menteri Besar is at the same time is also the Chairman of PKNS.*

Tuan Derek John Fernandez: *Yes.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *At the same time, PKNS is working with another company...*

Tuan Derek John Fernandez: *Yes.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *...Where he is also the Chairman.*

Tuan Derek John Fernandez: *Yes.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *This is in practice.*

Tuan Derek John Fernandez: *But...*

Datuk Seri Haji Ahmad bin Haji Hamzah: *Good intention.*

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Tuan Derek John Fernandez: *But MB does not sit on the OSC of Petaling Jaya City Council. He never sits. EXCO members do not sit there.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *No. Eventually...*

Tuan Derek John Fernandez: *So, when application come in, we just— we know it is a state application, but we see whether it is complying with the law.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *OSC eventually for any— for the matter per se Petaling Jaya, eventually it goes to MB too.*

Tuan Derek John Fernandez: *No, it does not. I don't know maybe— under this administration since 2018, it never goes. Because under the law, pihak berkuasa tempatan adalah approving authority for perancang, bukan kerajaan negeri. So, it doesn't go. In fact, we've*

rejected so many of the state ones. Then they asked why. Then we said the zoning all that, then you follow the process of the law.

The problem here is the Minister is not in the position to insist the Datuk Bandar to follow the law because he is sitting there. That is the problem. That is where the conflict occurs. I think I've pointed out quite clearly to Yang Berhormat Subang. You follow me. We are dealing about planning approval.

So, I agree with you but you cannot sit on the approving authority. You cannot sit. Dalam akta, kita— sekarang OSC ya, kita dapat every meeting, you have no kepentingan, you have no interest, you and your relative, kita mahu sign. So, kalau Minister sits there, what is his interest? His interest is he is the commercial partner. The company, Yayasan is a commercial partner with somebody else. So, it is very hard for him to— actually senanglah dia buat. You see, he said, "I am sorry Datuk, you just appoint somebody to sit there and decide". It is not difficult. You can say, "I recluse myself, saya tak boleh. Datuk Bandar won't get involved in this. We won't get involved in this application. Ask Yang Berhormat Permatang Pauh to sit down there and she can chair the meeting and then make the recommendations." Why it is so hard?

Akan tetapi mahkamah dah buat keputusan, ada konflik. Itu sebab kita punya Federal Board...

Datuk Seri Haji Ahmad bin Haji Hamzah: I can see that but in this case now for DBKL for that matter when the Minister is there, it is a matter of argument. You see, he is the Minister. He sits in the Yayasan as the Chairman because by virtue of his appointment. At the same time, he is also in OSC because this is just one organisation.

Tuan Derek John Fernandez: But the thing is they are not. It is not one organisation because— or you can. But when it comes to an application involving land in which your organisation is applying for and that application must go through a public hearing process, you cannot sit. That is what I am saying. You cannot sit on that one.

Datuk Seri Haji Ahmad bin Haji Hamzah: It is wrong. But actually now, this is what really happened. Because he is also the Minister.

Tuan Derek John Fernandez: I agree it happened. That is why we are here today.

Tuan Wong Hon Wai: Okay, Derek. Sorry. Back to the same thing. It is just something that came across my mind. Let's say like we use Majlis Bandaraya Ipoh as an example. Today, the State Government of Perak alienates three acres of land to Majlis Bandaraya Ipoh. So, they go and enter into a joint venture agreement with a developer. And the developer will for sure put in the development order application to Majlis Bandaraya Ipoh. If we are going to apply the strict

interpretation of the conflict of interest here, so Majlis Bandaraya Ipoh wouldn't be able to actually hear and also decide on the development order.

Tuan Derek John Fernandez: *Right, right. It is not Majlis Bandaraya Ipoh's land.*

Tuan Wong Hon Wai: *No. If the land is alienated to Majlis Bandaraya Ipoh, or Majlis Bandaraya Ipoh themselves has a piece of land, and they go into a joint venture agreement with a developer, developer comes in with a development order application, Majlis Bandaraya Ipoh will actually need to hear the application.*

Tuan Derek John Fernandez: *They can ask the independent one. They can ask ADUN or MP to preside but anyway, that is taken care. The act says that the local authority when you want to develop your own land, you don't have to have a public hearing, under 19(2) of the Town and Country Planning Act. But what in those cases you do is you ask the chair to be somebody else. That is what we asked DBKL. "Datuk, you don't sit there. Put somebody else." Why is it so difficult? You should do that. Number one.*

Number two. If you had alienated the land consistent with the local plan, that is not an issue. "It is my land. It is commercial, plot ratio is four. You..."— can only do plot ratio 4. That is not the issue. It is when you do it in contravention that it becomes a problem. Okay.

So, the addendum, 273 DO issued. Okey, 273 banyak ini. It is a lot. And that doesn't include the supplementary list. I think you call up the KL MPs, they will show it to you.

Okay, next one. The violations impact the preservation of natural environment inconsistent with what the government wants. So, if you talk about— there are so many in the analysis if you want to go through. They increased commercial and— you know lah, everything is increased for— increased intensity for higher development value.

In some cases, plot ratio four or 10 density— imagine you bought a house, say Titiwangsa. Semua orang tahu Titiwangsa. Banglo. You spent so much money there and you want the quality of— suddenly the bungalow lot in front of you now can put up 25-storey, walaupun the plan that was supposed to be passed says it is all bungalows. So, there are a lot of victims in this, you know. A lot of people had been victimised.

Kalau we want to do like that, no need to have a plan then. Kita semua boleh buat apa you suka dengan kepadatan apa you suka untuk satu negara. Everybody will be happy. You think everybody will be happy? Tapi, tidak dibuat. Unlimited plot ratio for anybody and any use. Why only a certain selected people— some getting that, not everybody. If that is what your intention was to encourage development. So, significant increase in KL density, an increase in plot ratio— did not go through the problem. Okay, next one. I think I've already said all that.

Okay, so this is very clear. Before after, before after. So, you can actually study this. So, this is the— I don't have to go too much. Taman Rimba, everybody knows Taman Rimba's story. But this is the plan that was and it has been recoloured. Not only they recoloured— can you see the shaded? [Merujuk kepada slaid pembentangan] The one that is on the left is the old one. That one has gone through the public process. Nobody objected. Because padang, siapa nak object padang? Padang kerajaan tanah— nobody is going to object. You tidak ada hak nak— sebagai pemaju, ini bukan you punya tanah. So, no problem there. 2008 is okay.

Akan tetapi now sekarang tukar all purple, high density housing, 400 persons per acre, plot ratio earlier was four, then they increased to 10, now the plot ratio is 10 dan sebagainya. So, many differences, what was passed. Ini passed under this term, 2018. That was the one before. Okay.

Now, even worse, dia buat itu shaded. Apa itu shaded? Itu TOD. Jadi dia dalam 400 meter daripada station, dia bagi lagi satu peningkatan sampai 10 plot ratio. So, problem ini, you punya dasar TOD you tak bentang kepada public, minta pandangan adakah you terpaksa bina RUMAWIP, rumah mampu milik...

Tuan Wong Hon Wai: *What is TOD? Sorry.*

Tuan Derek John Fernandez: *Transit-oriented development. It is a development that is around within 400 meters from MRT, LRT or public transportation hub. The intention of the government is to encourage growth around the stations and all that. But the government also says we want— in Selangor, you must have 25 percent rumah mampu milik by law. So, if you want to get it— but here no. Here, dia tak payah, no problem.*

Rumah mampu milik, I bagi you lain-lain— other lands. They used government's land for mampu milik. Why you want to use government's land for mampu milik? The developer— if you want to build, we give him high, you give 25 percent mampu milik. So, government doesn't have to lose all these parks and playgrounds. But this way in KL, it is different. Dia buat lain lah. So, this is one example. This is one out of 100. The changer on the right never went through the public hearing process.

Tuan Wong Chen: *Derek, the TOD is really targeted to help the poor urban folks. That's why you need the area allocated for low-cost housing.*

Tuan Derek John Fernandez: *Just to answer your point on how we go on Petaling Jaya. PKNS recently applied to get an exemption from TOD, you know. TOD in the project a joint-venture on what YB has said, government's land, Council of MBPJ said, go to hell. We follow 25 percent, no exemption. That's it. Because that's what the government said. They want to give affordable housing.*

Tuan Wong Chen: *Poor people need affordable housing and affordable transportation. This is what the TOD is built for.*

Tuan Derek John Fernandez: *All right. Next one is even worse. So, please look at this.*

Tuan Wong Chen: *Can we just go back? So, you see that Taman Rimba Kiara punya— that's the entire Taman Rimba Kiara, right?*

Tuan Derek John Fernandez: *Ya, ya, ya.*

Tuan Wong Chen: *So, how many percent is actually rimba now? There is none. But the Minister said that they are going to retain some green space. Is that right?*

Tuan Derek John Fernandez: *With respect to the Minister, he is new. So, he looked at the plan, he can't even read this plan. He relies on somebody to inform him about the plan. But we're looking at this as the TOD zone. So technically, they can build transport-oriented development of higher intensity within that area. And that's for future lah. Maybe he won't do now, maybe it won't be done now but it can be done later.*

Tuan Wong Chen: *So, on the surface— I mean just look at the map, one-third is retained which is at the very bottom, right? One-third is retained as rimba. Is it?*

Tuan Derek John Fernandez: *You do the maths, I won't commit to you on the figures, to avoid all fighting over the place. The point that I'm trying to say is— this is before. If you want to do after, also can. You show that picture on the right to the public, let them give a comment, have an impartial hearing and make a decision. That's it. Not just push in the colouring and not showing it to the public.*

This is like the current one and you can work it out— but for me, the coloured ones mean TOD. That means you can go up to probably plot ratio 10. So, you can see the top part is done... [Merujuk kepada slaid pembentangan] You can see the dark purple, that's completely gone. Earlier one it was white. When it's white, it means it is still in use. That means it is a park. That means the whole thing was a park. So, it's very clear. We look at the diagram, you can be very clear.

Okay, this is even worse. Because that one development order issued. This one no development order issued. So, now, when you checked who are the developer involved, who are the directors, these all you can siasat everything and find out. How come they are so lucky in life that they can come and take a community center and a public park and turn it into 400 persons per acre. These are great individual contribution to the country. Other people don't get. I cannot get with 10 years in government also. I think you all work more than 10 years also, no way, we don't get these opportunities.

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So, these are given and there is no development order. Yet, they recoloured the plan. Not even— remember I said the 273? The 273? They are supposedly kata dia sudah bagi DO, let bygone be bygone, cerita dan sebagainya. Akan tetapi ini belum lagi ada DO, lagi sudah colour. Community center, public open space, now tingkatkan kepada 400 orang satu ekar, dibenarkan.

Alasannya, “Oh, dia akan bina RUMAWIP”. Okey, nanti kita hendak tengok agreement, tengok pengiraan sama ada ini adalah alasan. Kalau you hendak buat RUMAWIP, no problem. You buat bentangkan sana dekat pelan, “Saya hendak buat RUMAWIP. Ini tanah diperlukan. Tanah community center dan public space”. You mahu bagi untuk orang komen. Orang said, “Okeylah, I think we can...”— no such process okay, this one.

Tuan Wong Hon Wai: Mr. Derek, you talked about open space, it strikes me because I remember that the open space— state sometimes they gazetted the open space. So, it means that you cannot touch it even it is a— so, in DBKL's case?

Tuan Derek John Fernandez: Open space means you cannot touch it for now.

Tuan Wong Hon Wai: But once you gazetted it, then it means that...

Tuan Derek John Fernandez: They can be gazetted it, number one. Number two, they may not have in a gazette— the gazette, there are two types. One is gazetted under Town and Country Planning Act 1976, they gazette it in the book. So, this is one form of gazette protection. The second one is under section 62 of the National Land Code, they gazetted. I don't know whether they gazetted it or not.

Tuan Wong Hon Wai: But DBKL today, is gazetted under National Land Code.

Tuan Derek John Fernandez: I don't know. I have no idea whether they gazette it...

Tuan Wong Hon Wai: Because if they gazette under National Land Code, they cannot just do that colouring like that.

Tuan Derek John Fernandez: We had whole forest gone because they can. In fact, the gazettment process is a lot easier than degazetting it from the local plan. Local plan is longer, more transparent process. But the fact of the matter is that it is proposed and supposed to be a park, it is an existing a community center and you have changed it without even— and recoloured the plan today without even going to a public hearing process. So, that is the issue.

Okay, next one. According to the FT Minister— okay, so, now dia kata, “Bygone be bygone. Kita buat lagi baru punya untuk tahun 2040.” 2020 ada problem, 2040. Year 2040-2080. So, we have a problem. We need to correct the problem straight away because there will be no more land left by 2040.

So, these are additional abuses— KL Structure Plan. Now, dia buat yang 2020-2040, apa dia guna? Dia go back here... [Merujuk kepada slaid pembentangan] This one is already changed. Tidak ada community center, tidak ada park. So, apa lagi you hendak buat? There is no more land left because of all the public amenities is gone by 2020 based on your current plan. There is nothing to be corrected in 2040. There is nothing left.

Okay, the mutilated. So, okay, the FT Minister kata dia akan buat lereng. So, dia akan look at the old one. So, it is clear that it is a conflict of interest. Because you know when you passed this plan, the land there is going to increase in value and it doesn't follow the original one, you should stop it.

Okay, next one. So, now, this is the important one. I want you to look at this. This is a typical JV with Yayasan— not only here but banyak...

Tuan Wong Chen: Derek, just before you go further, I am just going back to the last two slides.

Tuan Derek John Fernandez: The last two.

Tuan Wong Chen: Now, this plan, they scaled CP 2020 Plan, right? So, the next phase— is it every 20 years you go through the process, is it?

Tuan Derek John Fernandez: You can do it shorter, you can do it longer. You can do it five years or you can do it 10 years.

Tuan Wong Chen: So, there is no hard and fast rules in saying that?

Tuan Derek John Fernandez: No hard and fast rules. You can review the plan anytime you want, but normally you give a bit of time. Ten years is considered— Singapore of course they 30 years, 40 years plan, they have got their rolled down. But Malaysia, 10 years is a norm practice by most PBT. Ten years.

Tuan Wong Chen: So, if I say next year we decide to revisit this issue, that will cause a lot of problems for people that already bought the land. Let's say, we recoloured back to green space.

Tuan Derek John Fernandez: Okay. So, one, compensation has to be given under the law. If yours is a commercial land that you bought, and at the time the zoning is commercial and you changed it, then the act provides compensation. Much like land acquisition compensation, you have to pay. Okay, you have to pay for it. So, you can't just simply do it. Most of the time, they never go from commercial to open space. It is always the other way around because there will be a bit financial repercussion in doing that and normally, they won't do that.

Or sometimes like— if you look at PJ Sentral in Petaling Jaya, the developer can build the Sentral but he gives up six acres of park on commercial land. So, the policy will encourage thin

and tall development but freeing open space. It depends on what your policies are. You draw it— and you hear from the people. You have workshop, what is your pandangan, what is your pandangan. We will go through that and then you make a decision. You don't have to agree all the time with the people but you make a decision.

Okay, go back to JV. Okay, this is just one of them. So, if you look at the preamble (d)— I don't know whether you can see it, it is very small there. But, it first of all says that it got an extension to pay the premium. So, this is a government's land. The land is a park. You want to take the land and you cannot pay the premium. Why give you the land? The land is not advertised for sale. Nobody else is there. It is not in tender. You are unable to pay the premium. Okay, you want extension. So, that means you are not going to develop that land. Nombor satu, you are not going to develop the land.

Datuk Seri Haji Ahmad bin Haji Hamzah: *Which land?*

Tuan Derek John Fernandez: *The government's land.*

Datuk Seri Haji Ahmad bin Haji Hamzah: *Government's land.*

Tuan Derek John Fernandez: *Okay. So, Yayasan buy the government's land but cannot pay the deposit and they cannot pay the premium. Okay? So, they asked for an extension from the government. So, why is the government accommodating its own agency without having enough money to buy the land? That is an issue. Okay, next one.*

Number one, the clause 5.3, the developer now— the developer is in charge of the land. Bolehkah macam itu? Government's land...

Tuan Wong Chen: *Tidak bayar premium.*

Tuan Derek John Fernandez: *Don't pay the premium, pass to them and then the developer can charge the land to build. Is this a fair term? I mean— okay, another one. You read yourself.*

Okay, ini yang paling penting. You look at the plot ratio. The plot ratio says not less than six. So, bila not less than six, kita buat kiraan nilai. Kiraan nilai katakan— okey, you bina RUMAWIP, you bina so many units, you must count because this is about mathematics.

If I have a land and you are my developer, I usually give you 25 percent of my GDV. If your land, I take for nothing and I build, I give you 25 units. If I build high-end, you get. You get low-end, I build. You look at the agreement here. First off all, it says plot ratio not less than six and then dia bagi what your get out of it. But the plot ratio that has been approved is 10. Okay, number one.

Number dua, under 2008 draft— masa itu dia sign itu agreement dia tahu itu draft plan yang telah melalui proses bantahan awam tetapi belum lagi diluluskan. You tengok ini plot ratio.

The present plot ratio one is to eight, one is to 10. At that time the plot ratio is zero for this one because it is a park. But nevertheless, you alienated it. When you alienated it, you don't sell by tender. Kenapa ini? What is the best value basis? Or even negotiated, you must get the offer. There is no advertisement. The Mayor had said their policy.

Next one. Okay. So now, bila dia ada unit untuk resettle, sebenarnya it's already factored in on the entitlement. Plot ratio six, you are responsible for the resettlement of the unit. If the resettlement unit is not taken up the excess, the money is not paid to Yayasan, the money is paid to the developer. Also, the resettlement is based on the plot ratio six, you bagi plot ratio eight. You already covered the cost. That means the cost of the resettlement, where did the money go? That does not go back to the government. That does not go back to Yayasan. Even Yayasan also doesn't get the money back. So, you have to ask whether these all are proper agreements or not.

So, this is my recommendation, kalau dengar. Nombor satu, gazet yang sekarang ada pada ini... [Sambil menunjukkan senaskhah dokumen] Kita revoke. Kita katakan ada kesalahan— bukan kesalahan, you slipped up. You take off the addendums. Addendum can put tetapi you jangan colour buku. Buku sama seperti dahulu. Addendum hanya menunjukkan perbezaan from 2008 until now. Itu you replace it with that. So, the public is happy. Okay, what was supposed to be passed, we will pass.

Now, we got all these 273 plus 400 issues, immediately, you go through the process of retable amendment. Amended plan. Ia ada proses sana amended plan di mana atas pelan, you tunjuk yang mana sudah bina, sudah jual kita tidak boleh buat apa, kita tukar zoning tetapi ia punya impak macam ini, kita akan control. Mana yang belum lagi diluluskan, okey, kita hold dahulu, kita tidak mahu luluskan. So, we can go through that.

Okay, and then, for changes 2019, they require the Minister to run a new public objection and comment process before adopting— 2019 can be roll out. So, there is no problem here. Very simple solution, esok boleh selesai masalah ini. Akan tetapi, they seem to be reluctant.

Okay, now, there is a note— actually, saya betul cakap, you don't even need Federal Territory Ministry lah, kalau you honest lah. Dulu pun tidak ada di bawah PMO punya department. Kalau ada, ia mesti ada defined roles-lah because we have a Mayor, Datuk Bandar already. You have Labuan, you got Putrajaya. So, why you need somebody there? What are they doing, in fact? I think in last GE also, many oppositions at that time were calling for the abolishment of the FT Minister. You need at least the Minister should not be ordering Datuk Bandar as you like, you know. I think this is something you need to decide.

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If you— I hope, I don't know whether Datuk Bandar will come or not but this is the old one. You see the face. He is very kecewa. I mean he feels useless. He sits there and then in the same building, somebody come, "Eh, Datuk, this one how?" "Sorry, this one we already tolak." Okay, press lift goes up, go and see— it is not good. It is undermining authority of the Mayor. Then, the Mayor jadi macam office boy sahajalah.

So, cannot like that. Do what other states do. General dasar you boleh buat tetapi you tidak boleh buat arahan macam itu. I think in the court case also he said, "When you write like that, I have to follow". That is what he said. "When he tulis there "sokong", I have to follow." So, this gives problem.

Local government elect— election tidak apalah, tidak payah sebutlah. Akan tetapi yang problem itu one person made the decisions. Kalau ada members sit there, the decision is better. They got different party, different people. So, it's more telus. You can ask all these issues. So, you have one person to decide, it is very dangerous. Very dangerous in local government. In all PBT, we have 24 including the Mayor. Many times, we fight with the Mayor, Mayor said he doesn't agree. Dalam kes A&W, kita walked out, kita kata tidak boleh. Ini buku kata macam itu. And akhirnya dia setuju. Dia bagi plot ratio lapan, kita katakan kita kira pakai kiraan 7.2 maksimum sahaja boleh bagi, fight semua itu, lepas itu jadi isu, dia balik kepada 7.2. Okey?

Datuk Seri Haji Ahmad bin Haji Hamzah: *[Bercakap tanpa menggunakan pembesar suara] ...Entirely against for that matter or the practice by the present government now. It shouldn't be spelled out there. There is no such thing such as local government election. If the present government does not allow that, you cannot do it.*

Tuan Derek John Fernandez: *Ya. It is true. This was— apa yang dibagi dekat sana, if you don't want to go to election on local government, there must be some public participation in the decision of local government. Because, everything that you decide has a big effect on them. Presently, in the local government, the MP or ADUN doesn't sit. Under this government. So, who will listen to the people's voice? So, you have counsellors appointed by the political party of the day and they contribute to some elements. If you want to ask for MP and ADUN attendance, it is good too. So, what I am trying to suggest is, in KL, we have a problem because there is only one person that will decide. That is why it is a problem. There is nobody else has the decision power. Baru sahaja diwujudkan Jawatankuasa Wilayah Persekutuan kan? Dia bagi MP— that is just only now only but that one also has no legal power.*

Okey, valuation yang...

Tuan Wong Chen: *Derek, I am very confused. You mean there is no counsellor at DBKL?*

Tuan Derek John Fernandez: *No.*

Tuan Wong Chen: *Really?*

Tuan Derek John Fernandez: *No. Not one. DBKL operates under different set of laws.*

Tuan Wong Kah Who: *Who is actually playing the roles of counsellor?*

Tuan Derek John Fernandez: *Nobody plays the role. They have got an advisory committee whose advice you don't have to listen to. They meet two to three times a year. So that he has forgot it, it is my bad they don't have anybody there.*

Tuan Wong Chen: *Who is in the advisory committee? I mean randomly selected...*

Tuan Derek John Fernandez: *All parties will submit some names... [Disampuk] Appointed. But there is no advice. You can't advise one or twice a year. Decision is every day. [Ketawa]*

So, valuation of public land is important. Bila ia public land, kita mahu based on what is the allowed development in the plan. Not based on not follow the plan because you are getting short change a lot of money.

Okey, next one. So, it is very clear, it is FT Minister. Datuk Bandar should not get involve in Yayasan punya application. Any applications there you serah kuasa kepada— you ada kuasa sana, you boleh serah kepada mana-mana MP atau badan lain also can. You serah they will make it. That's better.

And, of course, saya katakan Federal Territory (Planning) Act tukar kepada Town and County Planning Act supaya ada satu undang-undang untuk seluruh Malaysia, not two different types.

Tuan Pengerusi: *Okey, terima kasih kita ucapkan kepada Tuan Derek John Fernandez atas taklimat yang diberikan ataupun prosiding yang baru sahaja selesai beri taklimat kepada PAC Parlimen pada hari ini. So, kita— thank you very much. [Tepuk]*

Tuan Derek John Fernandez: *Any questions from pegawai-pegawai?*

Tuan Pengerusi: *Dah tutup dah. Okey, thank you very much.*

[Mesyuarat ditangguhkan pada pukul 12.04 tengah hari]