
THE SIGNIFICANCE OF SECURE LAND TENURE IN THE PERSPECTIVE OF *MAQASID AS-SHARIAH* AND SUSTAINABLE DEVELOPMENT GOALS

ⁱ*Kamilah Wati Mohd, ⁱⁱSharifah Zubaidah Syed Abdul Kader

ⁱFaculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), Nilai 71800 Negeri Sembilan

ⁱⁱInternational Islamic University Malaysia (IIUM), Gombak 53100 Selangor

*(Corresponding author) email: kamilah@usim.edu.my

ABSTRACT

Land represents one of the key resources of wealth for a country with economic, social and environmental dimension. Inevitably, security of land tenure and dealings is vital in managing land resources as a trust from the Almighty to humankind. In view of this, Islam considers protection of property and wealth as one of the five fundamentals of *shariah* or the *maqasid as-shariah*. Similarly, the significance of secure land tenure for sustainable development has been acknowledged by the United Nations. This paper seeks to examine the advantages of safeguarding land tenure to the economic and social well-being as well as repercussions from failure to uphold the same particularly in facing the pandemic of covid-19. The research employs doctrinal approach. The findings of this paper suggest that the government has to play proactive role in ensuring land tenure and dealings are guaranteed and protected by enhancing the legislative framework of land administration system in Malaysia

Keywords *Secure land tenure, maqasid as-shariah, sustainable development, food security, Malaysia*

Introduction

Land represents one of the key resources of wealth for a country with economic, social and environmental dimension. Inevitably, security of land tenure and dealings is vital in managing land resources as a trust from the Almighty to humankind. Land tenure is defined as “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land”. (The Global Land Tool Network at UN Habitat). The tenure can be affected in a variety of ways, depending on constitutional and legal framework, social norms, cultural values and, to some extent, individual preference. Secure tenure is the right of all individuals and groups to effective protection by the state against forced evictions. According to UN-Habitat (2004:31), security of tenure refers to “an agreement between an individual or group to land and residential property, which is governed and regulated by an administrative and legal framework which includes both customary and statutory systems. Security of tenure derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable. In general, a person can be said to have secure tenure when they are protected from involuntary removal from their land or residence by the State, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. In Malaysia, property rights are constitutionally protected by virtue of Article 13 of the Federal Constitution which provides that no person shall be deprived of their property save in accordance with law and if such deprivation occurs, adequate compensation must be made to the affected parties. This paper examines the significance of secure land tenure from the perspective of *maqasid as-shariah* and sustainable development goals. It further highlights the advantages of safeguarding land tenure to the economic and social well-being as well as repercussions from failure to uphold the same particularly in facing the pandemic of covid-19.

Security of Land Tenure in the Perspective of *Maqasid-As-Shariah*

Literally, *maqasid* is the plural form of the Arabic word *maqсад* whose radical word is *qasada* which means purpose or intention. *Ibn Ashur* defined *maqasid as-shariah* as the wisdom observed by the Lawgiver in almost all aspects of legal rulings. Its objective is to govern human life and to protect their interest. *Alal al-Fasi* defined *maqasid as-shariah* as the end sought behind enactment of each of the legal ruling of *shariah* and the secrets involved. This can be observed from most of the injunctions of the *syariah* either related to rituals (*ibadah*), transactions (*muamalat*) or crime and its punishment are for the benefits for mankind and to prevent harm from them. For example, the wisdom behind the injunction for performing prayer (*solat*) is to act as protection for the believers from committing all evils. Similarly, the underpinning objective of the punishment of cutting the hand of thieves is to protect property as well as preventing the public from committing the same crime due to the severity of its punishment.

The objectives of *shariah* are highlighted in numerous places in *al-Ouran*. Allah says: “And We have sent you (O Muhammad S.A.W) not but as the mercy for the *al-amin* (mankind, *jins* and all that exists)” (Al-Anbiya’: 107). Similarly, Al-Quran explains the objective of *shariah* as a healing to many spiritual and internal conflicts in human life as well as guidance and mercy for Muslim. Allah says in surah Yunus: “O mankind! there has come to you a good advice from your Lord (i.e the Quran, ordering all that is good and forbidding all that is evil), and a healing for that (disease of ignorance, doubt, hypocrisy and differences, etc) in your hearts, guidance and a mercy (explaining lawful and unlawful things etc) for the believers.” (Surah Yunus:57).

The five fundamentals of *shariah* or the *maqasid as-shariah* relate to protection of five essential aspects of human being i.e life, religion, descent or lineage, property and intellect (Ahcene Lahsasna 2013). In regard to protection of property, Islam provides comprehensive guidelines on safeguarding one’s property either through preventive measures such as requirement for a proper contract for any commercial dealings up to risk mitigation and management through insurance scheme or *takaful*. The importance of protection of property or wealth is to ensure that property is acquired and spent properly as allowed by *shariah*. This is in line with the basic concept of ownership in Islam wherein Allah is the absolute owner of the universe and man as the trustee of the earth. This is affirmed in surah Al-An’ Nisa’ verse 132 where it states “To Allah belongs all things in the heavens and on earth. And enough is Allah to carry through all affairs”. Further in surah Yunus Allah says “Then we made you vicegerents in the land after them to see how would you act” (Surah Yunus: 14).

Muslim jurists have asserted five main aspects of protection of property as follows (Asyraf Wajdi and Said Bouheraqua 2016):

- i. protection of property through the protection of ownership.
- ii. protection of property through its acquisition and development.
- iii. protection of property from damage.
- iv. protection of property through its circulation.
- v. protection of property through protection of its value.

The protection of ownership of property is implemented through regulating the contracts of dealings as well as prevention of acquiring wealth through illegal means. *Al-Quran* recommends Muslims to write down all future obligation transactions to be kept as a record (Al-Baqarah: 282). Protection of property also means no property should be taken from its owner without his consent and fair compensation should be given for any utilisation or deprivation of other’s property. Similarly, Islam guarantees the right to acquire and develop property. Allah encourages Muslim to seek a living such as mentioned in surah al-Jumma: verse 10 “And when the prayer has been performed, then you may disperse through the land and seek for the bounty of Allah.”

In the same vein, Islam enjoins protection of property from damage i.e protecting the property from risk that can harm it and preventing property from damage through its use for harmful purposes. There is a clear command from Allah on this matter as stated in surah al-Baqarah verse 195: “Spend in the cause of Allah; do not contribute to your destruction with your own hands, but do good, for Allah loves those who do good”.

Protection of property is also translated through wide circulation of property among the public and active transfer from one hand to another in the form of expenditure and investments. (AkhtarZaite 2018). Islam provides several mechanisms to facilitate proper circulation of property among the public which includes various forms of financial transactions, imposing *zakat* as well as promoting charitable acts such as *waqf*, *hibah*, *wasiyyah*, etc. At the same time, Islam prohibits all types of manipulation and monopolisation of wealth by certain groups only. The Prophet (S.A.W) said: “Whoever monopolises a commodity with the intention of overcharging Muslims is a wrongdoer”.

Another form of protection of property is by protecting the value of the property, which prohibits any form of devaluing or overpricing of commodities. This measure is important in safeguarding the interests of the public against suppression from unethical traders. At the same time, Islam provides several mechanisms to ensure that the right to property is well preserved against any injustice or wrongful deprivation. This is evidenced from the Prophet (S.A.W)’s sermon at his farewell pilgrimage, “Your lives and property are forbidden to one another until you meet your Lord on the day of judgment.”

Consequently, offences against property such as theft, embezzlement, fraud, or extortion are unlawful in Islam. Furthermore, there are several injunctions against all sorts of dishonest dealings and severe punishment awaits those who transgress the property of others. For example, Allah says in surah *al-Nisa*’ verse 29: “O ye who believe! Devour not your property among yourselves by unlawful means, except that you earn by trade with mutual consent. And kill not yourselves. Surely Allah is merciful towards you”. In these verses Allah prohibits acquisition of property by unlawful means and the only permissible method of acquisition is through mutual trade. Unlawful means can be in the form of fraud, forgery, misrepresentation, or any other illegal means prohibited in Islam. Similarly, Islam condemned those who practice deceit in their commercial dealings. For example, Allah says in surah *al-muthaffiffin* verse 1-3: “Woe to those that deal in fraud, those who, when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men, give less than due.”

It is noted that Al-Quran in many places also specifically mentioned about the importance of safeguarding the property of orphans. In surah *al-Nisa*’ verse 3 Allah warns against misappropriation of orphan’s property. It reads: “And give the orphans their property and exchange not the bad for the good and devour not their property with your own. Surely it is a great sin.”. Special protection is given to orphans since they are a vulnerable group and can be easily subjected to abuse. Thus, those who are responsible to take care of orphan’s property must deal with the property for the benefit of the orphan and they cannot misappropriate the property for their own use. In the same vein, Islam prohibits those with weak understanding from managing property. This is stated in surah *al-Nisa*’ verse 5: “Do not hand over to those of weak understanding, your property which Allah has made a means of support for you”.

There are stern punishments for those who infringe the rights of others. For example, the punishment for theft is the *hadd* punishment of cutting off the hand of the thief subject to the stipulated requirements. This is mentioned in surah *al-Maidah* verse 38 “As to thief, male or female, cut off his or hands: a punishment by way of example, from Allah for their crime.

Property rights are safeguarded to a great extent that Islamic states cannot rescind the right of any citizen in their boundaries save in accordance with law and payment of compensation. In one incident, it was reported that the Prophet (S.A.W) had acquired the property of some of the people of *Madinah* for the construction of a mosque with their consent and he paid compensation to the owners in accordance with the prevailing price although the owners did not demand any price. Caliph *Umar* followed this practice when he paid ten thousand dirhams as compensation to the Syrian cultivator who complained that the army had trampled down his crops (Ridzuan Awang 1994).

Based on the above authorities, it is clear that the objective of *shariah* to safeguards one's property is carried out through various means such as good governance and practice, criminal punishment as well as providing proper compensation if one is deprived of his property even if through legal means such as compulsory acquisition of property.

Security of Land Tenure and Sustainable Development Goals

Sustainable development was first defined in the Brundlant Report (1987) as “development that meets the need of the present without compromising the ability of the future generations to meet their own needs. (WCED World Commission on Environment and Development 1987). On the 25 September of 2015, world leaders adopted the 2030 Agenda for Sustainable Development (SDGs) to ensure sustainable development is adopted and maintained for the benefit of future generation. It contains a set of 17 goals to end poverty, fight inequality and injustice and tackle climate change. In reference to protection of property, it is estimated that 70 percent of the world's population does not have access to affordable system to secure their rights. In response to this, the SDGs outline several goals related to secure land tenure which include:

- a) Goal 1. End poverty in all its form everywhere: By 2030, the target is to ensure all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as to basic services, ownership and control over the land and offer forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.
- b) Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture. By 2030, through secure and equal access to land and other resources the agriculture productivity and income of small-scale food producers, in particular women, indigenous people, family farmers, pastoralists and fishers can be doubled.
- c) Goal 5. Achieve gender equality and empower all women and girls. Member states are required to undertake reforms to give women equal rights to economic resources as well as access to ownership and control overland and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

Undoubtedly, secure land tenure is significant in achieving the above goals. Consequently, every country needs to ensure its legal system is able to provide legal and economic security to the landowner and any person dealing with land particularly among poor and vulnerable groups.

It is interesting to note that the 17 SDGs goals are in consonant with the five essentials of *shariah* which is intended for the well-being of human being in the world and hereafter. (Atih Rohaeti, Muhammad Syukri and Hakimi M Shafiai, 2015). For example, promotion of peace and justice as contains in SDGs' goal no. 16 is well stated in surah *al-Maidah* verse 8: “O you who believe! Stand out firmly for Allah and be just witnesses and let not enmity and hatred of others make you avoid justice. Be just: that is nearer to piety and fear Allah. Verily, Allah is Well Acquainted with what you do”.

Similarly, there are many guidelines in the Quran that guide mankind on the ways to manage the earth and use all the resources to ensure the earth is protected for the present and future generations (Ainul Jaria Maidin and Omar Oseni 2011). In surah *al-Qasas* verse 77 Allah warns against damaging activities on earth: “But seek, through that which Allah has given you, the home of the hereafter; and [yet], do not forget your share of the world. And do good as Allah has done good to you. And desire not corruption in land. Indeed, Allah does not like corrupters.”. Al-Quran also prohibits mismanagement of resources through excessive taking of food and drinks which may affect food security in the future as stated in surah *al-Araf* verse 31: “O children of Adam, take your adornment at every masjid, and eat and drink, but be not excessive. Indeed, He likes not those who commit excess”. Similar reminder contains in surah *al-An'am* verse 141: “And He it is who causes gardens to grow, [both] trellised and untrellised, and palm trees and crops of different [kinds of] food and olives and pomegranates, similar

and dissimilar. Eat of [each of] its fruit when it yields and give its due [*zakah*] on the day of its harvest. And be not excessive. Indeed, He does not like those who commit excess.”.

Security of Land Tenure and Dealings in Malaysia

Land administration system in Malaysia is modelled after the Torrens system in Australia. The system is described as a system of land title where a register of land holdings maintained by the state, guarantees indefeasible title to those included in the register (Salleh Buang 2010). The system is codified in the National Land Code 1965. The main challenge to the security of land tenure and dealings in Malaysia is the incidence of land fraud which inevitably caused innocent parties such as landowners or *bona fide* purchasers to be wrongfully deprived of their title or interest in land (Ainul Jaria and Hunud Abia Kadouf 2010). Factors contributed to the incidence of land fraud include the weaknesses in the land registration system, weaknesses in conveyancing practices, poor security measure in the implementation of computerized land registration system, fraudulent individuals (Syukri 2011) and corruption (Noraida, Jady and Noor ‘Ashikin 2013). The absence of a compensation scheme to provide statutory remedy to any person who suffer loss through the malfunction of the land registration system gave a grave impact on landowners in Malaysia. This issue if left unchecked will give serious effect to the confidence of the public and investors to the land registration system in Malaysia. (Siti Radiaton and Khadijah 2013).

The Significance of Secure Land Tenure in facing the Pandemic of Covid-19

The global Corona virus (Covid-19) pandemic has brought the light the importance of food security that is expected to be more crucial as borders remain closed with nations having to fend for themselves. The term ‘food security’ is used to describe food availability, access and use at many levels, including the global national, local, household and intra household levels (USAID 2013).

The unprecedented incidence is causing severe disruptions in local to global level food supply chains and this issue requires quick response from every country including Malaysia. The government has announced an allocation of RM1 Billion to a food security Fund to ensure there is sufficient supply of food in the country amid the Covid-19 pandemic (The Edge 2020). Each country needs to reassess its ability to feed itself and explores measures to face the natural cycle of pandemic. In 2019, Malaysia ranks 28 in the Global Food Security Index. Thus, concerted efforts must be mobilised to address issues on food security as well as the agriculture and agri-food industry.

In relation to this, secure land tenure is vital to ensure and develop more productive agriculture. If the land tenure system is guaranteed by the state, landowners are encouraged to involve in land related investments and agriculture activities. Similarly, bankers and financiers are willing to accept land as secured collateral. More incentives such as extended temporary occupation licence beyond three years should be considered by the state to encourage more agriculture activities.

6. Suggestions

Secure land tenure system is one of the catalysts for economic growth. It will stimulate economic activities and generate foreign investments to a country. It is one of the factors considered in the overall assessment in ease of doing business by the World Bank. Thus, the government need to play proactive role in ensuring secure land tenure and dealings by addressing the following issues:

- i. The overcome the weaknesses in the land registration system that pave the road to land fraud by enhancing the standard operating procedures at land office.

- ii. To tighten the conveyancing process by imposing ‘the certificate of correctness’ by the solicitors attending to legal documentation and introducing ‘vendor’s disclosure’ in a sale and purchase transaction to make sure a purchaser is provided with sufficient information before making the purchase.
- iii. To enhance the security measures in the implementation of computerized land administration system to avoid digital fraud.
- iv. To provide a statutory compensation scheme under the Malaysian Torrens system to indemnify any person who have been wrongfully deprived of their land due to fraud or other related causes.

In responding to the issue of food security, it is critical for the government to re-evaluate its policy in agriculture sectors. Drastic measures must be undertaken to ensure that Malaysia has food security sustainability. As such, Malaysia approach towards agriculture research, food policy, land use and smart technology and entrepreneurship in agriculture sector need immediate attention (The Edge, 2020).

Conclusion

The significance of secure land tenure for economic, social and environmental purpose need no advocating. Thus, man as the trustee of the earth need to administer the earth in accordance with the command of Allah and ensure sustainable development for the benefit of future generations. As such, one of the key elements to achieve that goals are to ensure that secure land tenure is guaranteed since land is the basis for all human activities on earth.

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