

Leasehold Residential Land in Malaysia from Sharia Perspective

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To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v14-i5/21191>

DOI:10.6007/IJARBSS/v14-i5/21191

Published Date: 26 May 2024

Abstract

Leasehold is one of the land tenure systems in Malaysia, alongside freehold. This journal article presents a study on leasehold land in Malaysia from the perspectives of Sharia, history, its effects on landowners, and the nation. The research explores the leasehold land tenure system within the context of Islamic principles, examining its historical background, implications for landowners, and its broader impact on the nation's economy and society. By analyzing leasehold land tenure through Sharia principles, the study aims to provide insights into the ethical and legal considerations surrounding land ownership in Malaysia. Additionally, it seeks to shed light on the historical development of leasehold land tenure, its implications for landowners in contemporary society, and its implications for national development strategies. Through a comprehensive examination of these factors, the research contributes to a deeper understanding of leasehold land tenure in Malaysia and its implications for various stakeholders.

Keywords: Leasehold, Freehold, Land Governance, Ownership, Residential Land, Shariah Perspective.

Introduction and Definition

In Malaysia, land serves a multitude of purposes, including residential, mining, commercial, and others. However, this study will narrow its focus to residential land, as the discourse on all land uses can be extensive. Within the Malaysian context, residential land is classified into two main categories: leasehold land and freehold land.

Leasehold land, in Malaysia, is governed by the National Land Code 1965, where all state land is owned by the state. Owners can renew the lease before it expires or apply for a fresh alienation. Ownership reverts to the government if the lease is not renewed. Leaseholders can only transfer the land with state consent and usage is limited to the lease conditions, subject to town planning and environmental controls. (Land, n.d.). Leasehold land characteristics include limited ownership duration, the option for lease renewal or extension, and restrictions outlined in the lease agreement (Denvers, 2023).

In summary, leasehold land in Malaysia involves temporary ownership through a lease agreement with the government, subject to renewal or alienation processes, with specific limitations and considerations for owners regarding ownership duration, renewal, and property usage.

In contrast to leasehold land, freehold land does not have a lease period, does not involve ground rent or service charges, and offers complete autonomy to the owner in terms of building and usage. While freehold land may have a higher upfront cost compared to leasehold land, it provides long-term stability, full ownership rights, and no restrictions on property modifications or usage. Overall, freehold land is a preferred choice for many property buyers due to its enduring ownership status and the absence of ongoing financial obligations to a freeholder (Economic, n.d.).

In other words, freehold land refers to a type of land ownership where the owner has complete and outright ownership of the land, without any time limit or lease agreement. This ownership is perpetual, lasting forever or for an indefinitely long period. Freehold land allows the owner to have absolute control over the property and is not subject to ongoing payments like ground rents or maintenance costs associated with leasehold land. Owners of freehold land can sell the property at their discretion, and in case of death without a will, the property automatically passes to the spouse or heir. Freehold land is characterized by its permanence, lack of restrictions on usage, and the ability to be sold or passed down through generations (Addland, n.d.; Syafiq, 2023).

Literature Study

The literature study of leasehold land delves into various aspects of land tenure systems, particularly focusing on the leasehold concept. Research in this area explores the legal framework, economic implications, and practical applications of leasehold arrangements in different contexts (LawTeacher, 2018). Scholars analyze the characteristics of leasehold agreements, the rights and obligations of leaseholders and lessors, and the impact of leasehold systems on land management and development. One example of such a study is a research conducted by a group of researchers titled "An Analysis of the Leasehold Concept in the Land Management System of Indonesia and Malaysia" (Rohimi et al., 2012)

Studies often investigate the distinctions between leasehold and freehold land, the duration and terms of lease agreements, and the implications of leasehold arrangements on property values and market dynamics. One example of such a study is a research conducted by Eddie Chi-Man Hui titled "An Empirical Study of the Effects of Land Supply and Lease Conditions on the Housing Market: A Case of Hong Kong." Chi-Man (2004) Additionally, research may examine the role of leasehold land in promoting agricultural practices, urban development, and sustainable land use (Adenuga et al., 2021)

The literature study on leasehold land from a Shariah perspective delves into the Islamic legal framework governing land tenure systems, particularly focusing on leasehold arrangements. Scholars analyze the compatibility of leasehold concepts with Islamic principles, examining the rights and responsibilities of leaseholders and lessors within the framework of Shariah law (Azamuddin, 2021)

Research in this area explores the Islamic jurisprudence related to leasehold land, including the permissibility of lease agreements, the conditions for a valid lease contract, and the implications of leasehold arrangements on property rights and obligations. Scholars also investigate how leasehold systems align with Islamic teachings on property ownership, wealth distribution, and social justice. One of the studies discussing this perspective is the research

titled "An Analysis of the Leasehold Concept in the Land Management System of Indonesia and Malaysia" (Rohimi et al., 2012)

Overall, the literature on leasehold land from a Shariah perspective provides valuable insights into the intersection of Islamic law and land tenure systems, offering guidance on the ethical and legal considerations surrounding leasehold arrangements within an Islamic context. One area that has not been extensively studied is the concept of leasehold from a legal perspective and its impact on the people and the economy, which will be the focus of this study.

Research Significance

Land is something incredibly precious. It holds value not only from an economic and financial perspective but also possesses significant power. Imagine if someone is born in the land of Malaysia, and gains Malaysian citizenship, their descendants firmly establish roots here generation after generation, yet they have no land to build a shelter home. At present, if they live in a state of renting or squatting, when the landlord demands they leave, they must depart. Thus, they have no power to continue residing even if they have plenty of money.

Conversely, if they have even a small piece of land, they have authority over that land. Even the Prime Minister or the King must seek permission from them if they wish to set foot on that land. This is what is meant by the power of land ownership.

As citizens of this country, born on this beloved land, anybody may still become refugees in their land and be squatters in their own country. This can happen if they cannot own land and have no place whatsoever in the existing governance system or if their rights are denied in any way. Hence, Islam views land as a fundamental asset to be accessible to all individuals. This perspective is rooted in the divine decree of Allah SWT:

وَإِذْ قَالَ رَبُّكَ لِلْمَلٰئِكَةِ اِنِّيْ جَاعِلٌ فِى الْاَرْضِ خٰلِفَةً

Meaning: And [mention, O Muhammad], when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority."

This verse elucidates that Allah has ordained mankind to dwell upon the face of the earth or to live on the land. It is understood that land is a fundamental necessity for humanity, akin to their need for air, food, water, and the like.

It underscores the significance of land not merely in terms of its commercial value but also in its capacity to confer authority and ownership. This principle finds resonance in the teachings of the Prophet Muhammad (peace be upon him) as conveyed in his sayings, highlighting the importance of equitable access to land and the empowerment it brings to individuals within society. The Prophet Muhammad (peace be upon him) prohibited the sale of land for business capital, acquiring luxury goods, extravagant vehicles, and the like. This is based on the sayings of the Prophet Muhammad (peace be upon him):

مَنْ بَاعَ دَارًا أَوْ عَقَارًا فَلَمْ يَجْعَلْ ثَمَنَهُ فِى مِثْلِهِ كَانَ قَمِيمًا أَنْ لَا يُبَارَكَ فِيهِ

Meaning: Whoever sells a house or property and does not set its price at what it is worth, then he has committed an act of deceit, and Allah's blessings will not be in it. (Majah)

Imam At-Tahawi transmitted in his book titled "Mushkil al-Athar" that Ibn 'Uyaynah mentioned that he found Allah, Almighty, and Exalted, saying: "And He blessed it and apportioned its provisions," meaning the land. So, whoever sells a house or property, he has sold what Allah, Almighty and Exalted, has blessed in it. Therefore, he is punished by replacing it with something that is not blessed for him, meaning what he exchanged it for in terms of buildings and constructions that are not blessed for him (IslamWeb, n.d.)

The Islamic System Diligently Safeguards These Inherent Rights

Islam not only informs about the importance of land to every individual, but it also implements a comprehensive land system to ensure that every person has the opportunity to own land, especially residential land. The comprehensive land system comprises three Shariah Laws that ensure everyone has the opportunity to own land and prevent monopolies that hinder the marginalized from acquiring land. These three systems are known as the *Ihya' El-Mawat* (reviving barren land), *Iqtha'*, and the prohibition of *Hima*.

Ihya' Al-Mawaat refers to the concept of revitalizing or developing land that lacks ownership or is considered dead land to make it productive. It involves the cultivation or construction of residential homes or the development of vacant land that has not been utilized or cultivated before, to make the land useful for living, farming, or other purposes. This concept is deeply rooted in Islamic law and economic principles, focusing on revitalizing barren or unproductive land for the benefit of society and the economy.

The *Ihya' Al-Mawaat* system provides an opportunity for everyone to own land free of charge, especially for residential purposes. When the conditions are met, one becomes entitled to own the land by fulfilling the requirements outlined in the Quran and Hadith. As time passes and one continues to reside on the land, the strength of their ownership increases, as emphasized by the saying of the Prophet Muhammad (peace be upon him):

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعِزِّي ظَالِمٍ حَقٌّ

Meaning: Whoever revives a barren land, then it is for him. And there is no right for a oppressor (Tarmizi, 1975)

Iqtha' law means the legal concept of granting land by the government to an individual or the community, either as ownership or usage rights. This system can also be described as a land privatization system. This practice involves allocating specific lands to be cultivated by individuals who are deemed capable of developing the land, provided that the land is not owned by anyone else. The government's decision to assign land to someone capable of cultivating it can take the form of ownership or the right to utilize the land for a specified period. This practice is rooted in Islamic law and historical precedents, where rulers have allocated land to individuals for cultivation and development purposes, following the examples set by Prophet Muhammad and the Four Rightly Guided Caliphs (Akhmad, 2012; Mujahidin, 2017).

The *Iqtha'* system enables the government to identify lands with development potential for allocation to deserving individuals or entities. This system is reminiscent of how the Prophet Muhammad (peace be upon him) granted *Iqtha'* to his companions, as exemplified in the story of the *Iqtha'* of the salt flat called the Ma'rib Dam Salt. (Dawoud, n/a)

Both systems that grant fundamental land ownership rights will not be complete unless they are safeguarded from the harm of monopolies, known as "*Hima*." "*Hima*" means that someone with power, whether the government or the like, can deny, restrict, and prevent the public from legitimately owning land through the *Ihya' Al-Mawaat* system as mentioned above.

All three Islamic systems compel all parties, including governing individuals and citizens, to refer to these systems to grant rights and opportunities for all citizens to own land, especially residential land. Simultaneously, these systems also establish guidelines on which land can be owned by the public and which cannot ensure that the rights of the public are preserved, such as the prohibition of acquiring land through *Ihya' Al-Mawaat* when the area is needed by the public, such as river areas, pasture and the like based on Hadith of the Prophet Muhammad (peace be upon him), which narrated a man of the Companions (RA):

عَزَّوْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَمِعْتُهُ يَقُولُ: النَّاسُ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلِّ وَالْمَاءِ وَالنَّارِ

Meaning: I went on an expedition with the Prophet (ﷺ) and heard him say, "People are partners in three things: grazing pasture, water and fire." [Reported by Ahmad and Abu Dawud, and its narrators are reliable (*thiqah*) (Fawzan, 1435 h).

By the principle, "Shariah is revealed to safeguard the welfare of humanity," or, in simpler terms, considering that all three land as mentioned above systems are decreed by Allah to protect the interests of all parties; individual, public, and government, this study aims to assess the extent to which the implementation of leasehold land adheres to these three principles.

World History of Leasehold Land

In the annals of world history, leasehold land originated in Europe during the Dark Ages and the oppression of the nobility over the common people. The term 'freeholder' was used in the Domesday Book of 1089, and means the permanent and absolute tenure of land or property with freedom to dispose of it at will or, briefly, the full, outright ownership of land. Dwight (2018) The Domesday Book is a detailed record containing a survey of land ownership, land values, and population figures in England during the Norman era under the rule of William the Conqueror. Compiled in 1086 AD by the order of William I, the book was intended to assess the wealth and potential income of the government. The Domesday Book serves as a primary source for the history, sociology, and economy of England during that period and is a crucial reference in genealogical research and local history (Britannica, 2023)

Land equated to power in the Middle Ages; powerful families wanted to retain ownership of their land while maximizing their earnings from it. The first leasehold estates appeared a few decades after the Domesday Book later in the Middle Ages. The concept of leasing was established to allow 'villeins' or 'serfs' to work a plot of land, for a fixed period, on the basis that they would pay 'in-kind' by providing food and services to those further up the social order, principally the land owners.

Up until the 1920s, the landowners or freeholders still held a dominant position over their tenants. However, during this period, legislation was introduced to hold down rents and restrict the right of landlords to evict their tenants. Landlords who were facing dwindling profits began selling long leases which typically ranged between 99 and 125 years on their properties as a means of generating more revenue without losing ownership of their land – and this was the beginning of the modern leasehold system that we know today (Dwight, 2018)

The history of leasehold reform in the United Kingdom reflects a series of legislative measures aimed at addressing issues and imbalances in the relationship between tenants and landlords. The Leasehold Reform Act of 1967 introduced to enable tenants of houses held on long leases at low rents to acquire the freehold or an extended lease, was a response to the expiration of 99-year leases for homeowners in South Wales.

In 1985, The 1985 Act marked another important step in leasehold reform by granting rights regarding service charges. This legislation ensured that only reasonable service charges were payable by tenants and gave them the right to information about these charges. The aim was to prevent tenants from facing unreasonable financial burdens related to services provided by landlords.

The tenant rights were expanded when a new act was introduced in 1987 which offered certain tenants the first opportunity to purchase the freehold. Additionally, tenants gained the right to compulsory purchase landlords' interests in specific circumstances, further rebalancing the power dynamic between landlords and tenants. In 2002, the Commonhold

and Leasehold Reform Act 2002 represented a comprehensive reform, extending rights for leaseholders. Among its provisions, the act relaxed qualifying rules for purchasing the freehold of a leasehold property. It also prevented landlords from forfeiting leases due to trivial debts and introduced the concept of commonholds. This commonhold introduced by the 2002 Act, was designed to replace long leaseholds. This innovative concept allows individuals to own the freehold of individual flats, houses, and non-residential units within a commonhold association and community statement. However, despite their potential benefits, commonholds have not been widely adopted, primarily due to a lack of incentives for developers and the absence of continued income streams for them.

In the current reform effort, despite past legislative efforts, leasehold arrangements continue to face criticism for the power imbalance between tenants and landlords. Concerns include landlords charging unreasonable fees for alterations, building defects, forfeiture rights, and legal costs. The Department for Communities and Local Government responded to these issues in its 2017 report. The report proposed prohibiting new residential long leases on houses, discouraging the use of help-to-buy shared equity loans, and encouraging developers to provide compensation schemes to leaseholders facing onerous ground rents (UOLLB, 2023). In summary, the history of leasehold reform in the UK reflects an ongoing effort to strike a fair balance between the rights of tenants and landlords, with each legislative milestone addressing specific concerns and evolving to meet the changing dynamics of property ownership.

Leasehold Land History in Malaysia

The history of leasehold land in Malaysia began during British colonization in the 19th century. At that time, the leasehold land system was introduced as part of the colonial administration structure. Through this system, lands were granted to individuals or companies for a specified period, usually tens of years. Leasehold recipients were given the right to use and manage the land, but the land was still considered the property of the British colonial government. (NikZain, 1989)

This marks the beginning of British domination over the Malay economy in Malaya through the implementation of a capitalist economic system, ultimately enabling those with capital and wealth to own land. (Micheaux, n.d.)

Before the era of the British invasion of Malaya, the prevailing land laws were based on Islamic law (Husain et al., 2018). Although the British version termed these laws as customary laws, implying that they were unwritten and unstructured laws, the reality is that they were Islamic laws formulated based on the Shafi'i school of thought. Just look at the law of *Ihya' Al-Mawaat* contained within those laws, which states: "The legal status of one who clears uncultivated land, except that it belongs exclusively to the one who clears it, (with) two conditions, (first) that the clearer is a Muslim, (second) that the land does not belong to another. When it is cleared, then the things found in it become the income of the clearer" (Ibrahim, 1991). This reality is also documented by William Maxwell in his book "Law and Customs of the Malays with References to the Tenure of Land" (Maxwell, 1884)

The reality is that the leasehold land system introduced by the British in Malaya could not be fully implemented due to armed resistance from the local population. Although it was enforced in federated Malay states like Perak, it faced staunch opposition in unfederated states such as Kelantan, Terengganu, and others, with the local inhabitants declaring jihad against the British. Samsudin (2014). Additionally, during the era of World War II, when the British were at war with Japan in Malaya, they failed to prioritize the implementation of this

colonial system. As a result, the customary land laws or Islamic land laws continued to be applied throughout Malaya alongside the land system attempted by the British. This was evident when the Chief Justice of the country, in the case of *Tengku Jaafar & Anuar v. State of Pahang* (1987), ruled that the land law in Pahang before the implementation of the Torrens system was based on Islamic law according to the Shafi'i school of thought (Buang, 1993, p. 8)

According to Professor Dr. Mohd Ridzuan Awang, the Islamic land system used throughout the Malay Peninsula is the Islamic land system. It was not disrupted by the Portuguese invasion (1511), Dutch (1541), and English (1775-1824) invasions. Islamic law and Malay customs related to land tenure systems can be seen in several provisions of old laws such as the Laws of Malacca (1523 AD), the Laws of Pahang (1650 AD), the Laws of Kedah (1650 AD), the Laws of Johor (1789 AD), the Perak Code, and the Laws of Ninety-Nine Perak (1765 AD). Ridzuan (1994) This can be observed through W.E. Maxwell's writings entitled "Law And Customs of the Malays with reference to the tenure of Land" in 1884 (Maxwell, Law And Customs of the Malays with reference to the tenure of Land, 1884)

Before independence, the Federation of Malaya (established in 1948 before independence) had 7 different land laws due to the British failure to control the population in implementing the existing land system (the Islamic land system). This was mentioned by the Reid Constitutional Commission, which emphasized the failure to standardize laws in Malaya at that time. (Buang, 1993, p. 10)

After Malaysia gained independence in 1957, the leasehold land system continued to be used as one of the forms of land ownership. This British system officially became the land law in Peninsular Malaysia (before the inclusion of Sabah and Sarawak into Malaysia) when it was formally incorporated into the National Land Code 1965 (Act 56 of 1965), enforced on January 1, 1966. Section 40 of the National Land Code 1965 states that all state land belongs to the state authority. When state land is disposed of by the state authority to an individual in perpetuity for an indefinite period, this land is granted a freehold title. When it is disposed of for a term of years, by law, not exceeding 99 years, this land is granted a leasehold title. Upon expiry of the lease period, the land should be reverted to the state authority. The owner will then have to apply for a renewal of the lease before its expiry or apply for a fresh alienation if the lease has not been renewed (Loong, 2020)

Starting in 1985, the leasehold land system was officially implemented comprehensively in Malaya, which is now known as Malaysia. Before that, state governments freely granted land to the people in the form of either freehold or leasehold, as mentioned above. When Amendment Act A587 came into force on March 25, 1985, state governments were no longer allowed to grant permanent ownership to individuals and corporations. (Buang, 1993, p. 34)

According to Section 76(aa), the grant of freehold ownership is highly restricted to public use, not for individual use. Only in cases where the state government deems it necessary due to special circumstances can land be granted as freehold ownership under Section 76(aa)(iii), which states: " where the State Authority is satisfied that there are special circumstances which render it appropriate to do so" (Buang, 1993, p. 35)

The Legal Impact of Leasehold Land Residential

Leasehold land in Malaysia has several legal implications that impact its ownership and usage. The National Land Code 1965 governs leasehold land, stating that a leasehold title vests the right to real estate for a term not exceeding 99 years (Loong, 2020). This means that

individuals or entities holding leasehold land do not have full ownership of the land, as the title will eventually revert to the state authority upon expiry of the lease term.

In other words, after the lease period expires, the owner of residential land will automatically lose their rights without requiring any process of acquisition by the government, as stipulated in section 46(1)(a): "Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances: (a) upon the expiry of the term if any, specified in the document of title thereto".

When the leasehold period concludes, individuals not only relinquish their rights to the land they inhabit but also surrender their ownership of permanent structures erected upon it, including residential dwellings, commercial buildings, and other permanent fixtures situated on the land. This provision is stipulated in section 47(1): "On the reversion of any alienated land to the State Authority, or the determination of any lease of reserved land, or any license or permit issued by the State Authority with respect to any land under this Act or any previous land law, there shall, subject to subsection (3), vest in the State Authority all buildings on the land (by whomsoever erected) other than any of temporary construction and capable of removal." This means that houses and residential buildings on land owned by individuals whose lease has expired have also automatically transferred ownership to the government. Even more unfortunate, when losing land and residence rights, there is no compensation for the value of the house or building constructed, or any losses resulting from the reacquisition of expired leasehold land. This is based on section 47(2), which states: "Subject to subsection (3), no compensation shall be payable by the State Authority in respect of any building vesting in it pursuant to this section."

This is from a legal standpoint. However, the government may extend the lease period and provide compensation to those who have lost their rights. Nevertheless, this is not considered compensation but rather a gesture of goodwill from the government to those who are displaced when the lease expires.

Even though the government can extend the lease period and provide ex-gratia payments to those evicted, while this may be seen positively from one perspective, but from another angle, it can become highly negative as it could open up significant opportunities for corruption when such extensive power is granted to government officials. In this context, the government cannot be seen as the "public" because it entails the concentration of power in the government, namely the Chief Minister within the state context. I agree with the familiar saying that originated as a comment in a letter written by Lord Acton (John Emerich Edward Dahlberg Acton, an English historian who lived from 1834 to 1902), which goes: "Power tends to corrupt, and absolute power corrupts absolutely" (Martin, 1998)

Even more unfortunate, the leasehold system and the concentration of power in the hands of individuals in authority (Chief Minister) can lead to significant oppression, particularly in a multi-ethnic country like Malaysia, where one dominant ethnic group may deny the rights of other ethnic groups by either not extending the lease period or extending it at a high premium. This is because the extension of lease terms and the amount of premium are absolute powers vested in the government and landowners, and those whose leases have expired have no legal recourse whatsoever.

This is a possibility that cannot be dismissed, and when it occurs, there may be no transparency and fairness audit possible due to the significant concentration of power in the hands of the government.

The Shariah Assessment

Whoever examines the texts and rulings of Shariah will realize that the greatest objective of Islam, indeed its fundamental objective, is to achieve the welfare of the servants in both the immediate and ultimate sense. This is accomplished by bringing benefit to them and averting harm from them in their worldly and otherworldly affairs, thereby ensuring their happiness in both abodes. Thus, scholars of Islam have affirmed. Al-'Izz ibn 'Abd al-Salam said, "Verily, the entire Shariah is founded upon interests: either averting harm or bringing benefits." (IslamWeb, 2016)

In other words, to realize the welfare of every citizen, government, and public, understanding Shariah law regarding the leasehold issue is crucial for assessing what is beneficial and what is harmful to them. When there is an element of prohibition, it indicates the presence of injustice, and if it is permissible or obligatory, it indicates the presence of justice. This is based on the principles and Islamic beliefs held by the *Ahlu Sunnah Wal-Jamaah*, as mentioned by Imam Syatibi: "What is prohibited by Sharia is bad, otherwise it is good" (Dukhmiisi, 1996) Therefore, understanding the leasehold land system from a Shariah perspective, distinguishing between what is prohibited (haram) and what is permissible (halal), serves as a measure of what is good or bad, just or unjust, in the implementation of this land system. If there are elements of prohibition, it serves as an indicator of the existence of something bad or unjust, whether apparent or not. This is the meaning articulated by Imam Syatibi as the creed of *Ahlu Sunnah Wal-Jamaah*.

Hence, here are listed the elements that raise Shariah issues behind the implementation of the leasehold land system in Malaysia.

1. Implementing the Prohibited *Hima* System

Hima in linguistic terms, means to protect, prevent, and restrict others. The origin of "*Hima*" among the Arabs during the pre-Islamic era was that when a chief or noble among them settled in fertile land, he would use a dog to bark from a high place. Wherever the sound of his dog reached from all directions, he would designate that area as his own, controlling it so that others would not graze their livestock in that area. However, this system of *Hima* was not permitted according to Islamic law after the arrival of Islam, and the Prophet Muhammad, peace be upon him, prohibited it. This was because it imposed restrictions on the public and prevented them from benefiting from something in which they had rights (Az-Zuhaily, 1996, p. 6/683)

The land monopoly system was officially abolished with the advent of Islam through the saying of the Prophet Muhammad, peace be upon him:

لَا حِمَى إِلَّا لِلَّهِ وَرَسُولِهِ

Meaning: *Hima* cannot be established except by Allah and His Messenger (Suhaib, 2013)

Based on this hadith, the system of *Hima*, which entails the control and monopoly of the rich and noble over public land, comes to an end.

In other words, the prohibited "*Hima*" in Islam takes the form of an order issued by the government and rulers to restrict and prohibit the public from owning vacant land through the system of *Ihya' Al-Mawaat* (reviving the dead land). Before Islam, vacant land was controlled by the government and nobles through the *Al-Hima* system and then sold to the wealthy, while the poor had no opportunity to own land because they couldn't afford it. The same concept applies in the West during the feudal era, with the difference being that the wealthy and nobles made the villeins their workers and tenants through the concept of leasehold.

When we examine the National Land Code that gave rise to the leasehold land system, we find that it originated from the *Hima* system incorporated in the National Land Code, which replaced the Islamic land system that preceded it. The existence of *Hima* in the national land laws is quite evident through Section 48, which states: No title to State land shall be acquired by possession, unlawful occupation, or occupation under any license for any period whatsoever (KTN, 2020, p. 75). What is meant by unauthorized occupation is those who occupy government land without government permission are considered unauthorized even if they have fulfilled the conditions of occupation according to the law of *Ihya' Al-Mawaat*. This is because the national land laws consider land to be owned by the state government as mentioned in chapter 2 of the National Land Code, KTN (2020, pp. 6, 54) whereas, in Islam, the government or ruler is not the owner of the land; they are land managers who administer according to the Islamic land laws formulated by Allah, not by them as lawmakers.

In Islam, the government is obligated to recognize the people's property rights when they have fulfilled the conditions of occupying a particular land according to *Ihya' Al-Mawaat*. It has no authority to deny this because the power to grant and deny belongs to Allah, the true legislator of land laws. This is different from the power of the state government as stipulated by the National Land Code, where a Chief Minister has full authority to permit or deny any individual from occupying land, even if the occupation meets all the requirements of *Ihya' Al-Mawaat*. Here, we can distinguish that the true owner of the land in Islam is Allah SWT, and the government acts as a manager, whereas in the National Land Code, the government or Chief Minister appears to have the characteristics of the true owner of the land within the state. The key differentiator that denies the government from acting as the owner of the land is the law prohibiting *Hima* as stated above.

Restricting the *Ihya' Al-Mawaat*

Ihya' Al-Mawaat, also known as "Revival of barren lands", is a concept that involves the development of owner-less or unused lands (*mubah*) to make them productive. This process aims to bring life to barren or neglected lands by cultivating them for various purposes such as agriculture, farming, residence, and land management. The term *Ihya' Al-Mawaat* is rooted in Islamic principles and has historical significance, particularly in the context of early Islamic governance where it contributed to economic development. The practice of *Ihya' Al-Mawaat* involves revitalizing land that has not been utilized, turning it into a valuable and productive resource for the community (Mu'allim, n.d.)

Ihya' Al-Mawaat is an Islamic land system that provides opportunities for all layers of society regardless of status to obtain land rights, whether for residence or business. It consists of comprehensive laws that ensure land cultivation maintains all rights, such as the land being cultivated must be vacant and not owned by anyone, and not land that has been gazetted for public interest. The government cannot restrict and deny the rights of cultivators once they have fulfilled the requirements. If restriction occurs, it falls under the category of '*Hima*' discussed above (Az-Zuhaily, 1996, pp. 6/563-565)

The prohibition of '*Hima*' and the implementation of '*Ihya' Al-Mawaat*' are two complementary Islamic land systems aimed at preventing land monopoly practices by the government and aristocrats by individual government officials and aristocrats as occurred in Europe during the Dark Ages. Governments and national leaders can carry out '*Hima*' for public interest purposes such as gazetting land portions for military use or parks for public

use, and so on. Islam prohibits national leaders from carrying out '*Hima*' for themselves or certain individuals such as royal relatives and the like. If such relatives desire to land, they must go through the process of '*Ihya' Al-Mawaat*', not through '*Hima*', which entails claiming ownership of the land for decades without any development or activity (Az-Zuhaily, 1996, p. 6/539)

To prevent the revival of barren lands is one form of forbidding what Allah has made lawful. Prohibiting what is lawful is more severe than permitting what is forbidden because it tends to hinder and inconvenience the public, unlike permitting what is forbidden. (Al-Qardhawi, 1980) In this issue, denying the right of the public to own land is a form of forbidding what is lawful. Allah permits every citizen to own land when the conditions are met, yet suddenly the national land law denies and rejects this. As a result, land supply becomes limited, high demand drives up prices. Consequently, those without money cannot afford to own land even though land ownership is a fundamental right for everyone.

3. Denying and confiscating legitimate rights

According to Islamic Jurisprudence (Fiqh Islam), there are 4 recognized reasons for ownership, which are possessing 'mubah' property or asset, contracts, succession, and something that is generated from a valid original ownership (Az-Zuhaily, 1996, p. 6/562). 'Mubah' means wealth that has not entered the ownership of a specific individual, and there is no legal barrier to its possession, such as vacant land owned through the method of '*Ihya' Al-Mawaat*'. An example of ownership through contract is buying, ownership through transfer is inheritance, and an example of ownership generated from the original source is calves from their mother.

The assets acquired through these four methods are considered legitimate assets recognized by Sharia law. The owner is regarded as lawful, and once the conditions are fulfilled, ownership is deemed complete. This absolute ownership is the ownership of the thing (its essence) and its benefits together, whereby the owner is entitled to all legitimate rights. One of its most important characteristics is that it is permanent absolute ownership that is not bound by a limited time as long as the thing subject to ownership exists. It does not accept relinquishment (Az-Zuhaily, 1996, p. 4/394)

It is narrated that Urwah bin Az-Zubair said: "I bear witness that the Messenger of Allah (peace be upon him) ruled: Indeed, the land belongs to Allah, and the servants are the servants of Allah. Whoever revives the dead land, then he has more right to it (As-Saqqaf, 2007). The strong legitimate ownership by land cultivators through the law of '*Ihya' Al-Mawaat*' is clearly evident when the Prophet Muhammad (peace be upon him) described any attempt to seize land from its cultivator as unjust as mentioned by the Prophet Muhammad (peace be upon him):

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ وَلَيْسَ لِعَزِزِي ظَالِمٍ حَقٌّ

Meaning: Whoever revives a barren land, then it is for him. And there is no right for an oppressor (Tarmizi, 1975)

If ownership through land cultivation is considered valid and strong, then the status of residential land ownership through purchase is stronger because it encompasses almost all elements of ownership mentioned above. If seizing and denying legitimate ownership rights through the system of '*Ihya' Al-Mawaat*' is considered unjust by the Prophet Muhammad (peace be upon him), then seizing and denying ownership rights through legitimate purchase is even more unjust because the owners sometimes spend a quarter of their income and nearly half of their lifetime paying monthly installments for the house and resident land.

Residential land owned by citizens is typically sold by the state government to developers, who then sell it to buyers. If a buyer passes away, then their children will inherit it through inheritance. From the perspective of Sharia law, this land is legitimately and permanently owned by the buyer and their descendants through purchase and *Ihya' Al-Mawaat* (when it was originally vacant land or *Mubah* land) as described above.

It should not be indefinite or it should have been freehold instead of leasehold. But Section 48 does not allow any government land (which is considered permissible in Islam) to become the property of the people. Therefore, it is a leasehold to be loaned or leased for 99 years when Section 40 is enforced.

After the expiry of the period, the rights automatically cease from the buyer or their heirs based on Section 47(1), and no compensation can be claimed from the owner as per Section 47(2). This reality is referred to as confiscation (مصادرة) in Islam and it is carried out against innocent individuals. Therefore, the Prophet Muhammad described the usurper as unjust.

Imagine the owner's father has been paying RM3000 per month for 30 years or 1/3 of his salary (if RM3000 out of RM9000 salary) and spent half of his life (30 years of installments out of a lifespan of 60 years), the children and heirs are denied the rights that the deceased owner worked so hard for, at such a great cost and duration.

Conclusion

In conclusion, the leasehold residential land system contradicts Islamic principles. It can be considered unjust as it denies legitimate rights upon its expiration. Not only is this system legally forbidden, but it also brings about negative effects such as opening doors to corruption, causing inconvenience and impoverishment to the people, and ultimately concentrating the nation's economy in the hands of the wealthy. This reality is detrimental to the overall economy of the country because the people's purchasing power is the true measure of the nation's economy, especially in realizing the concept of the velocity of money. Even more severe is the origin of the implementation of leasehold, which stems from the dark ages of Europe, namely the era of slavery and when nobles ruled over the people. Although there are differences in terms of land ownership, where it used to be in the hands of individuals but now in the hands of the government, the clear similarity is that the people are denied legitimate ownership rights no matter how hard they strive, even if a third of their salary is spent on buying residential land and half of their lifetime is spent paying off loans. Europe itself has undergone revolutionary changes to a much better era and system, but unfortunately, remnants of this slavery system still exist.

This journal study makes a significant contribution to social science concerning human rights from the perspective of Islamic jurisprudence. It also serves as a crucial contribution to the absolute freedom of humanity, where it should work for oneself and others around, not for the interests of others and their rights denied. If a property buyer in Malaysia works and his earnings are used to pay bank instalments for 30 years, with 1/3 of his salary used to pay monthly instalments, after the period, his rights are denied. So, for 30 years, he only benefits the bank, developers, and the Government, but his rights as a buyer are denied even though his benefit is the right to occupy the property for as long as the leasehold period is valid, like a servant working for his master, he gets to stay but after the period expires, he can be evicted. This contains elements of slavery in the early post-dark European era that implemented the leasehold system for the benefit of the nobility, while their workers only received temporary benefits. This journal study is also highly significant in delineating

ownership rights between individuals and the Government or individuals and the public so that each does not encroach upon the rights of the other.

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