

The Implementation of the Milk Al-Manfa'ah Concept in Malaysia: Reference to the Group Settlement Area Land Act (1960)

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Abstract: This article will discuss the success of the joint-venture between the Federal Government and the State Government in their effort to develop the agricultural land through the concept of 'milk al-manfaah'. Therefore, the Group Settlement Land Act (1960) has been formulated in the Parliament. Through this Act, every settler is granted 10 acres of farm lands by means of the *al-manfaah milk*. The benefit ownership concept has been practised widely in the law history of the Islamic land by the Uthmaniyyah government named as *the miri land*. The same concept has been of practice in Egypt as well as several other Islamic countries. Based on the land Federal Constitution, it is located under the jurisdiction of the state government, whereas FELDA serves as a government agency. Through the 1960 Land Act, the Federal Government is permitted to perform land duties before the ownership is issued by the State Government. Based on the milk al-manfaah concept, FELDA has successfully developed 447,578 hectares of land in Malaysia.

Key words: Milk Manfaat • Land Act • Malaysia

INTRODUCTION

In Malaysia, there are at least three laws that relate with land administration. Every law or Act has their own jurisdiction. The most broadened land law that has been applied is the 1965 National Land Code. On the other hand, the 1960 Land Act has only been of use in group developmental lands especially the FELDA Settlement Lands. The distinguishing element between the National Land Code with the 1960 Land Act is the existence of several restrictions not contained in the former. This element is considerably very interesting to be studied as a comparative study with the laws of the Shara'. The understanding towards the land ownership concept subject to the 1960 Land Act will be able to resolve arising issues.

1960 Land Act (Group Settlement Area): 1960 Land Act is one very crucial Act that is used to explain the relationship related to the policy of holding and the granting of land ownership that exists currently between the Federal Government and the States' governments and which also makes it possible for the former to implement

grand-scale development programmes. The main purpose of this Act is to build group settlement areas which also necessitate a uniformity of laws and policies, not only in terms of the establishment of group settlement areas, but also the terms and conditions of land ownership and the land occupancy[1]. Under this Act, the State Authorities (The King or Governor/ State YDP) have the power to allow the Development Authority to work on any state lands as a particular group settlement area and for this, the State Authority can sella an agreement with the Development Authority in issues pertinent to:

- Place allocation and expanse,
- The said land distribution to rural and urban settlement areas,
- Plant or plants that are suitable to be grown,
- The size and number of farms, the attribute or size of the piece of the farm land,
- The rate of premium, rental tax and other payments collected,
- The prerequisites of the Development Authority that one can own or accommodate the housing areas in any rural settlement areas.

The FELDA land ownership dealing is subject to the 1960 Land Act (G.S.A.). The Act was formulated in 1960 in line with the provision of Article 76 of the Federal Constitution. The Act had started to be effective on 30 May 1960 and it was applied in the states in the Malaysian Peninsula except for Penang and Malacca and was later amended to include both these states effective on the 1st of January 1966 [2].

The purpose of the formulation of the 1960 Land Act is to make uniform the policy for all the states, leveling the policy and executive power to the state authority and make haste the new land opening. In more detail, the Act carries the aim of bringing into existence a new planned settlement by providing some economic resources through farm opening by the enforcing agencies. The planned development leans on the regulations and restrictions as contained in this Act, to ensure that the area developed will achieve the intended maximum economic development in terms of the yield of the farm and the income of the settlers.

The side-aim of this Act is to eradicate poverty and distribute land to those residents who do not have any land, as well as producing a harmonious, progressive society.

The Amended 1960 Land Act: This Act had been amended a few times with the purpose of re-adapting the regulations and restrictions according to the current needs and demands. Among the amendments that had involved the enforcing agencies including FELDA were [3]:

1965 Amendment. Among others were involving the agreement between land development agencies with the state government, the declaration of group settlement areas, land development by the cooperation handled by the land development agency.

1982 Amendment. Among others, involving the granting of rights of the residents in awaiting the processes of ownership and termination or cancellation of group settlement areas.

2002 Amendment. Involving amendment to Sections 12, 14 and 15 which enabled the rural holding given for ownership and jointly-owned by not more than two owners. This amendment is done to enable the wife, ex-wife or the rightful heir to the settlers to be included in the rural holding as the joint owner.

The Content of the 1960 Land Act: This Act contains 48 sections which are divided into 9 key areas. Among the important aspects and concepts that have fallen under the responsibility of the enforcer in developing the group settlement areas are:

- *Gazetting the Group Settlement Area*

Section 4, requires that the State Government declares any of the government land areas as a Group Settlement Area.

Section 5, enables the State government as the authority to make declaration of any areas declared in section 4, as rural settlement area that also serves as an agricultural area.

Section 6, enables the State Government to make declaration of any area in the area declared under section 4, as an area of settlement in the city that serves as accommodation.

Meanwhile, the affair of gazetting this area involving measurement and the plan preparation work associated with the Mapping and Measurement Department before any gazette declaration is made.

- *Agency Agreement Letter with the State Government*

Section 34 (I) that necessitates the enforcing agency to make an agreement with the State Government, when a particular area is endorsed by the state government to be developed as a group settlement area. The agreement letter is prepared to enable any government land to be developed by the Land Development Authority by complying to several conditions and regulations, among which are [4]:

- The land location and expanse.
- Land fragmented into rural and suburban areas.
- Type of plants.
- The rate of tax determined and the duration of payment.

Restrictions of the 1960 Land Act: The land ownership granted to the FELDA settlers is not absolute in nature. This is due to the fact that there are some restrictions to be adhered to. Although the land ownership letter can be easily obtained, the settlers cannot freely perform any business on the land by means of selling, mortgaging or ownership transferring at their own will. The land ownership letter contains statements of the Need Restrictions which states that all business transactions on the land which ownership is granted, can only be done with the permission of the State Authority if the settlers intend to do business on the land that has been claimed as their own. The purpose of the restrictions by the state government is to avoid from the case of land abuse, despite the land already granted to the settlers. Other than that, the ownership letter granted to the settlers is confined to the exclusive terms and conditions of the

agreement between FELDA and the settlers. The special conditions contained in the ownership letter goes as such:

“This land must be administered by the Federal Land Authority, a Statutory Body established under 1956 Land Development Laws (NO. 20/1956).”

The conditions have been determined by the State Government as dictated in the 1960 Land Act provision. This indicates that the decision to allocate the administration of the FELDA settlements given to FELDA is as intended and wished by the State Government.

As dictated in this Act, several restrictions have to be included to ensure that the development of agricultural land can be implemented continuously, with maximum rate of production that can be lucrative to the settlers.

Among the restrictions are:

Section 14, does not allow for any rural Holding issued to more than two holders considered as joint holding or owner [5].

Section 15, the Village Holding area cannot, at any time, be *subdivided or partitioned*. This section also does not permit the village holding to be leased in part, or in its entirety (Land Act 1960).

Section 17, restricts the use of the Off-City Holding area only for certain crops as agreed in the agreement between the State Government /Enforcing Agency. This area cannot be used for purposes other than the ones decided [6].

Section 7 (3), restricts the use of the City Holding only for the purposes of housing, public use, trading, industry or other uses as endorsed by the state government [7].

The restrictions coded in the 1960 Land Act need to be assessed, based on the perspective of the Shara'. The State government, upon handing a particular area to be developed by FELDA, already has a strategic plan and with certain predetermined goals. The restrictions imposed seek to materialize the aim of opening farm lands on a grand scale, for the benefit of eradicating poverty among the people and at the same time, advancing the economy of the country. If the restrictions are not made effective, it will possibly fail the development plan strategized by the government, The restrictions does not intend to serve as acts of ruthlessness towards the struggling settlers, but done for the collective benefits either for the settlers or the government itself.

Based on the principle of the *siārah syar'iyah* the ruling party or the government has the right to formulate laws uforthe good of the people. Several scholars like al-Ghazālī (1996), al-°Izz ibn °Abd al-Salām (2000), al-°ūfī (1964) and others have well provided various interpretations on *maslahah*. Sa°id Rama°ān al-Butī (1986) has concluded the interpretations by seeing it as a benefit that is commanded by Allah s.w.t to His servants through the preservation of religion, soul, mind, generation and properties. *Ma°alahah* can also be seen as something relished, or a way to achieve the enjoyment, as well as avoiding miseries or finding ways to stay away from the miseries.

Ma°alahah from the perspective of Shara' is divided into three parts [8]: (1) *Ma°alahah mu°tabarah* meaning *ma°alahah* admitted by Shara' due to its existence through nas and ijmak, like laws or regulations prescribed in the Shari'a to preserve the meaning and aim of the five *tasyri°* which are preserving the religion, soul, mind, generation and properties. (2) *Ma°alahah mulgha*, or *ma°alahah* that goes against nas atau ijmak. *Ma°alahah* of this type is not acknowledged by Syara' and is regarded as *batil*, for instance drawing a similarity of the daughter's part with that of the son's in the property distribution on the pretext that *maslahah* is only for women. This is contrasting to the proofs found in the al-Qur'an whereby Allah dictates that "Allah dictates for you the distribution of properties to your children, one part for the son equals to two parts of the daughter". (3) *Ma°alahah mursalah*, which is *ma°alahah* which law in Syara' is uncertain. This type of *ma°alahah* can be beneficial or prevent destruction, like the effort of °Uthman ibn °Affān to collect the holy al-Qur'an in one *mushaf*.

Laws using the principles of *ma°alahah* need to fulfill the following criteria; The first is that, the laws that have been formulated are beneficial to the public and are not only suitable to certain groups in the community. The second is that, the benefit produced from the laws can be seen and felt and are definitely not an illusion. The third is that, the laws do not conflict with the syara' [9]. Regarding the *°ābi° ma°alahah* Sa°id Rama°ān al-Butī adds two more principles, which do not conflict with *qiyās* and does not cancel on the bigger *ma°alahah* [10].

The formulation of the 1960 Land Act centralizes on the principle of *ma°alahah* which is to eradicate poverty by generating various job opportunities in the farming sector. Without the restrictions, the government's panning and intention cannot be fulfilled. These measures have been supported in the *fiqhiyyah* approach [11]:

التصرف الإمام على الرعية منوط بالمصلحة

which means,

‘measures taken by the administrators towards their people bound by maslahat’.

In another aspect, the qualified candidates in the interview to become the participant of the land settlement are required to fill in the agreement form allocated by the 1960 Land Act (Form A, AA, B, C and D) [12]. The forms serve as a seal of agreement between the settlers and FELDA. At the same time, the 1960 Land Act will become the source of reference should there be any emerging doubts or disputes. Muslims are confined to the agreements that they have sealed, as long as the agreement does not legalise the wrong or make wrong something that is right or permissible (halal) The Prophet Muhammad s.a.w had stated [13].

المسلمون على شروطهم والصلح جائز بين المسلمين إلا صلحا حل حراما أو حراما حللا

meaning:

“The muslims are bound by the terms and conditions of an agreement and *sulh* is permitted among the muslims other than *sulh* that makes right what is wrong or vice versa.”.

Apart from the above hadith, the fiqhiyyah approach also highlights the obligation of the Muslims on the agreement that they have done. Such an approach [14].

يلزم مراعاة الشرط بقدر الإمكان

indicating:

‘it is common to adhere to the terms and conditions of an agreement based on what one can afford’.

What is meant by this approach is the agreements that do not oppose the Syari’a of Islam. Conflicting agreements with the Syari’a of Islam cannot be abided by at all. The agreement sealed by the settlers and FELDA would be a valid agreement which adheres to the shara’. Both parties are bound by the agreements that they have mutually agreed.

As the implementation of the *maslahah* approach in the FELDA land ownership especially which relates with the ownership restrictions stated in the 1960 Land Act and as stated clearly on the land grant, the opinions of the settlers residing in Lurah Bilut FELDA should be given due attention. Their opinion and experiences have indirectly proven the relevance of the restrictions for the survivability and competitiveness of the FELDA land settlements.

Three questions that have dwelt into the importance of the FELDA land settlement ownership restrictions have been put forth which are; firstly, the restriction of the FELDA land ownership rights should be maintained. Having done the analysis, it is found that only 8.5% had stated their strong disagreement over the maintaining of the restrictions, and 20.4% simply disagreed with the maintaining of the restrictions. This indicates that only 28.9% were of the opinion that the said restrictions would be burdensome. Therefore, an amendment is crucial. Meanwhile, 51.2% had chosen to agree that the restrictions needs to be maintained and 20% had stated that they agreed very much that the restrictions is maintained. 71.2% had given the opinion that the ownership obstruction is good and “precise” for the future of the FELDA lands.

Secondly, the FELDA land ownership restrictions needs to be amended. Through the analysis done, 13.4% of respondents had expressed their utter disagreement that the ownership restrictions is to be amended and 39.5% had stated that they disagreed over the restrictions. Therefore, a total of 52.9% opined that the restrictions had been relevant and any amendment was not necessary. Meanwhile 32.6% had chosen to agree that the restrictions was to be amended, whereas 14.6% had stated that they “strongly agreed” to the amendment of the restrictions.

Thirdly, the restrictions of the FELDA land ownership needs to be cancelled. Based on the analysis findings, it has been found that 22.1% had strongly disagreed to the cancellation of the restrictions and 48.8% had disagreed that the restrictions of the FELDA land is to be cancelled. 70.9% had gone against the cancellation of the ownership restrictions contained in the Act. They have the view that the cancellation can adversely impact the future of the FELDA land settlements. In actual fact, the answer has been consistent with the first question, whereby the ownership restrictions needs to be retained. Only 17.4 agreed that the ownership restrictions is to be cancelled and 11.6% strongly agreed that it is cancelled. The *Mafhum mukhalafah* which is about 70.9% have the opinion that the restrictions of FELDA land ownership should be retained [15].

The restrictions dictated in this Act do not impede the FELDA land settlements to become the land of legacy. This goes in line with the wishes of Tun Abdul Razak as he presented the this Law Bill at the Parliament on 9th May 1960 where he asserted that; “The policy formulated in this Clause 16, has been considered in detail and I have accepted the advice that this matter does not go against

our vey noble and pure Islamic policy and I would very much like to admit that based on that premise, which is the property should be distributed to its rightful heir and it should be continued to be done the best way possible” [16].

If this is to be scrutinized very carefully, the FELDA land settlement ownership process and the 1960 Land Act did not carry the purpose of impeding the generational ownership should there be any occurrence of death in the family. The obstructions of the Act seek to ensure that the government’s efforts to develop the economy and eradicate poverty can be materialized without any difficulty. With the obstructions, this will make it easier on the government to carry out the monitoring process.

The Inheritance of the FELDA Land Benefits [17].

The ownership restrictions coded in the 1960 Land Act is also affected should there be any case of death. Section 14 (2) 1960 Land Act (2002 Amendment), only enables the rural ownership is held by not more than two holders. The provision of ‘not more than two holders’ is still a novelty in our society. With that, there have been claims that the *farāi* law cannot be fully materialised on this entitlement, as it is not permissible by the Act and as it is against the Shari’a. Such an uncertainty cannot continue. Therefore, a study which complies with the criteria of the Syara’ is very crucial, in order for a finalized solution to be achieved.

Debates and writings on the legacy of the 1960 Land Act, have been very seldom introduced in the academic writing. Therefore, the argument concerning ‘not more than two holders’ is yet to be fully answered by most writers from the field of Islamic studies. Thus, it is no surprise that there are some opinions made on the fact that the non-permissible land-subdivision as mentioned in the 1960 Land Act is something that goes by contrast to Islam[18]. To resolve this issue, researchers have interviewed Prof. Dr. Wahbah al-Zuhaylī and al-Syeikh Dr. ‘Ekrema Sa’īd ‘abrī (Mufti al-Quds). Prof. Dr. Wahbah al-Zuhaylī is in the opinion that this practice does not go against the Syari’a, as it is only a matter of administration, but what remains to be important is that the named person registered as the owner needs to distribute the yield complying with *farāi* or the rate agreed among themselves. Meanwhile, Dr. ‘Ekrema Sa’īd ‘abrī has the opinion that it is unreasonable as it can provoke dispute amongst the heirs when clearly Islam has urged its followers to stay away from disputes and disunity. Based on these two opinions, researchers are more in

favour of the opinion voiced by Prof. Dr. Wahbah al-Zuhaylī as it goes in tandem with section 14 (2) 1960 Land Act.

At the same time, the land-subdivision issues have been dealt with a lot, although there is yet to be any clear-cut statistics tabulated on the issues. In this particular issue [19]. It is reviewed that the law of *faraid* in Islam has been pin-pointed as to why the land-subdivisions occurs. According to Dato Sir Mahmud the land segregation or better known as the *sub-division of land* and the land scattering phenomenon or more popularly termed as the *fragmentation of land* are some obvious impact of the *faraid*-styled asset distribution. The phenomenon of extreme land fragmentation has brought harm in various forms. By quoting a study done by Ungku Aziz, Dato Sir Mahmud shows that this phenomenon is the root of the problem of the rural poverty and one which adversely affects the national economy. This is exacerbated by the dispute that occurs between the land owners [20].

In this context, the Islamic *faraid* system cannot be the one to blame. Actually the heirs themselves lack the understanding of the reality of the system, whereby the *faraid*-based distribution only functions solely to determine the shares and rights of an individual heir instead of fragmenting the properties physically. Indeed, in the Qur’ān and al-Sunnah there have been some fixed laws concerning asset distribution, but the ways to administer the asset are not available in detail, due to the fact that it is up to the human to make or formulate laws and regulations to manage and administer a particular law or rule, under the condition that the regulations must not go against the laws decided in Islam. The parts and rewards decided by the system have not been conditioned in the system whereby the asset must be divided one by one among the members following their own parts [21]. Therefore, the understanding and confinement to the poorly formulated customs need to be remedied fast.

The administration of land inheritance under the FELDA planning is different from the administration of lands under the National Land Code. This stems from the varying provisions of the Act. 1960 Land Act section 14 (1) and (2) allocates that:

- Subject to subsection (2), a rural holding may be alienated only to one individual person qualified in accordance with the provisions of section 19 and no joint ownership of a rural holding shall at any time be permitted.

- A rural holding may be alienated and jointly held by not more than two holders.

As asserted in the theory of land ownership under the 1960 Land Act, the land would be owned only through inheritance, in terms of its benefits [22]. The government, through this Act only provides the endorsement which enables the land settlers and heirs to work on the farms as their sources of income. The restrictions allocated through the 1960 Land Act, the Agreement Letter between FELDA with the settlers, the Agreement Letter of Replanting and this land is only granted the ownership by means of a 99-year lease to prove that it owned purely in terms of the benefits alone. Therefore, the person replaced, is appointed under two conditions whereby:

- If all heirs agree to release their respective rights towards the land to one of them and promise that they will not make any demand afterwards, therefore the benefit of the land will be absolutely owned by the agreed heir.
- If the heirs disagree to release their rights towards the land to the person appointed, this does not mean that the land needs to have its borders segregated. This appointment only serves as the trustee alone. The benefit or yield produced from the farm needs to be distributed through *farāi* or on the rate agreed among themselves. The person is entitled to get two parts. The first would be the wage for the farm management and the second is the rate of the *farāid*.

For the purpose of the FELDA inheritance, 1960 Land Act which serves as the point of reference to the entire FELDA land settlements, still has the room for improvement, especially the one that involves inheritance and the second-generation ownership and so on. The act can be revised once again for the purpose of improvement, especially for cases of inheritance to the second generation. Researchers have the view that a clause needs to be inserted in the Act, seeking to explain the benefit ownership and the responsibilities of the heirs as to prevent any misunderstanding among themselves in the future. The explanation can be included in the Act through an amendment or issued in a particular form which particularly explains that the ownership is only about benefit ownership only. To avoid from the potential dispute among the heirs in the future, the religious approach is introduced. Therefore, Islam urges its followers to make a written agreement document when dealing with any contract [23]. The document can become the reference when there arise disputes and disagreements. In any circumstances, tolerance and

compassion among siblings, releasing the rights to an unfortunate heir and who is in the position where he or she needs the farm the most as the source of income for the person's family would be the wisest move. Successful heirs, with fixed income, should be able to practise tolerance on the heir that needs the farm as a place for his or her to earn an income. Allah s.w.t promises great rewards on such a sacrifice [24]. Through this sacrifice, the family relationships will be stronger.

CONCLUSION

Through the 1960 Land Act, the candidates who have fulfilled the criteria are allocated ten acres of farms, an acre of fruit orchard and a house. All activities and the management of the land settlement must be subject to the 1960 Land Act. The abolishment under the 1960 Land Act takes the lease of 99 years, where several restrictions have been included in this Act and made effective. The restrictions confined under the 1960 Land Act through section 15 if a comparison is to be made with the asset ownership theory from the perspective of Islam, categorise the ownership as one of benefits only. The restriction does not issue that the FELDA land settlement is named the inherited asset, as the *jumhur* opines that the benefit of the goods can be inherited after an occurrence of death. The rights of codifying the laws, agreement terms, effectiveness and *raqabah* ownership continue to be in the hands of the administrators.

Referring to the land ownership policy, in general the Malaysian government policy on the land ownership prior to the arrival of the British, had been based more on the Islamic customs and Shari'a. However, after the arrival of the British, the situation changed with the influence of the *common law* brought by the colonial power. This had continued and expanded to the existing land ownership policies available today. Therefore, there is still room in the Islamic perspective to coordinate the policy of the land ownership determined by the government with the Islamic Shari'a, including revisiting the allocations like "ownership cannot be denied" that have not been at par with the concept of land ownership in Islam, where land and all the assets are regarded as owned by Allah and human as the administrators. In relation to this, the concept of "*milk al-manfa'ah*" should be introduced in the land ownership concept according to the civil laws, because in a particular condition, like the land ownership under the 1960 Land Act, it should be discussed and referred as "*milk al-manfa'ah*" and not "*milk al-tām*". This improvement can facilitate in the resolving of a lot of issues and disputes, especially those that relate with the issue of FELDA inherited land settlement available throughout the country.

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23. Al-Qur’ān, Al-Baqarah, 2: 282. *إِذَا قَضَيْتَ مَعَ إِخْوَانِكَ عَهْدًا فَقَدْ إِتَّفَقْتُمْ عَلَيْهِ فَادْفَعْهُ إِلَىٰ أَوْلِيَٰهِ يَوْمَ الْوَعْدِ* “O you who have believed, when you contract a debt for a specified term, write it down”.
24. Verse 83, 177 al-Baqarah, verse 26 chapter al-Isrā’, verse 38 chapter al-Rūm, verse 36 chapter al-Nisā, verse 90 chapter al-Nahl, verse 7 chapter al-Hasyr and so on. Generally, the verses urge the people to perform good things, especially to the family and relatives. In this issue of tolerance, to those who have succeeded in their life endeavours like already having a fixed income, have a good position in the career, already have various sources of income, it would be great if they release a fraction of it to unfortunate siblings and those without income, other than the inherited yield of the farm. *The siblings are the closest to dhawī al-qurbā*. The sacrifice will not be wasted by Allah s.w.t. The term ‘sacrifice’ is used because there is only very few people who are willing to make such sacrifice.