

Principles of Land Control for Lot Lidi in Malaysia from the Perspective of Siyasah Syar'iyah

Mohd Marbawi bin Taha^{1*}, Azarudin Awang², Che Khadijah Binti Hamid³, Muhammad Hamdan Syafieq bin Ahmad⁴, Shahirah Said⁵, Norliana Ismail⁶

^{1,2,3,4}Universiti Teknologi MARA (UiTM) Cawangan Terengganu, Malaysia

⁵Universiti Teknologi MARA (UiTM) Cawangan Pulau Pinang, Malaysia

⁶Pejabat Perbendaharaan Negeri Perlis

*Corresponding Author

DOI: <https://dx.doi.org/10.47772/IJRISS.2025.SPikEM4>

Received: 05 March 2025; Accepted: 11 March 2025; Published: 15 April 2025

ABSTRACT

The issue of lot lidi has become increasingly critical in this country. Given its widespread sale across Peninsular Malaysia, an initiative was undertaken to conduct research analyzing this issue from the perspective of siyasah syar'iyah (Islamic governance principles). To achieve the objectives of the study, researchers adopted two primary methods: data collection and data analysis. For data collection, the methodology involved library research and field studies. Meanwhile, data analysis was based on inductive, deductive, and comparative methods. The study found numerous issues related to lot lidi, primarily because such ownership does not comply with legal requirements. These issues ultimately have implications across various dimensions, including legal, social, urban planning, food security, and more. These implications pose challenges for various stakeholders, including buyers, communities, and state authorities. By the end of the article, the authors conclude that the government's control policies on lot lidi align with the principles of siyasah syar'iyah. It is hoped that this study will contribute positively, especially in enhancing governance that adheres to the requirements of Allah SWT's divine laws.

Kata Kunci: Lot Lidi, Agricultural Land, Siyasah Syar'iyah.

INTRODUCTION

In Malaysia, the increasing population growth has led to a higher demand for property ownership. This situation has intensified real estate transactions, particularly in the densely populated West Coast states, such as Selangor, Johor, Perak, and Penang.

Various types of properties are traded, including residential houses and land. Among the popular schemes in the community is the Tanah Lot Lidi transaction. This scheme has attracted the interest of some buyers due to its generally lower price and larger size compared to residential plots in housing estates. However, researchers have noted that certain aspects of the Tanah Lot Lidi transactions do not align with the true intent and requirements of land law.

LITERATURE REVIEW

In general, researchers have identified several studies related to the theme of property ownership in Malaysia. One such study is titled "Potensi Rancangan Perkampungan Tersusun Sebagai Kaedah Alternatif Penyelesaian Lot Lidi Tanah Kategori Pertanian" conducted by Rusmiyati Binti Ahmad (2021). This research explores

methods to address the issue of lot lidi ownership through organized village planning, focusing specifically on the Manjung District in Perak. While this study is somewhat similar to the current research proposal, it is limited in scope, concentrating solely on Manjung District, and does not comprehensively examine the factors and implications of lot lidi.

Another study, “An Analysis of Co-Ownership in the National Land Code from the Islamic Perspective”, by Mohd Marbawi bin Taha (2016), focuses on co-ownership as provided under Section 342 of the National Land Code (NLC). This research highlights legal, financial, and social issues arising from co-ownership. Although the study centers on co-ownership, it differs from the unique co-ownership structure of lot lidi.

Additionally, Baharuddin Aziz (2009) conducted a study titled “Takharruj Dalam Pembahagian Pusaka Islam : Kajian di Daerah Kota Setar” . This study identifies several factors contributing to co-ownership in Kota Setar, such as the sentimental value attached to inherited property by heirs and challenges like layered inheritance issues. The study also reveals a tendency among heirs to inherit property jointly, especially in cases where land acquisition by authorities causes disputes among co-owners, often siblings or relatives. However, the study does not propose solutions to address these disputes.

Another relevant study, “Pemilikan Bersama Tanah Pusaka : Realiti, Masalah Dan Cabaran”, by Jasni Sulong, Nasir Ayub, and Mohd Marbawi bin Taha (2015), highlights the tendency of Malay communities to inherit property jointly. This research also uncovers challenges in co-ownership but does not elaborate in detail or provide a framework for resolving these issues.

Based on the researcher’s review, no specific studies have been conducted on the analysis of Tanah Lot Lidi control policies from the perspective of siyasah syar’iyyah. Therefore, this research is proposed to fill that academic gap. It also represents an effort to build a sound land administration system in line with siyasah syar’iyyah principles, which aim to benefit both the government and the people in the long term.

METHODOLOGY

This study is a qualitative research grounded in literature review and supported by fieldwork. The literature review generally classifies sources into three categories:

- a. Lot Lidi transactions and their issues
- b. Land law and administration
- c. Fiqh, particularly Fiqh Muamalat and Siyasah Syar’iyyah

For the fieldwork, the primary technique employed is interviews. The researcher will interview individuals knowledgeable and authoritative in land administration, the challenges surrounding lot lidi ownership, and Siyasah Syar’iyyah.

At the analysis stage, the researcher utilizes several methods, including inductive, deductive, and comparative techniques.

CONCEPTUAL CLARIFICATIONS

The Concept of Lot Lidi

"Lot lidi" is not a legal or administrative term. Even in the law, there is no specific term to describe this type of transaction scheme. This term is popularly used in society.

Lot lidi can be understood through several specific characteristics. It refers to titled land subject to agricultural use. The location of lot lidi is often within environmentally sensitive areas, such as paddy fields and agricultural zones under the State Structure Plan.

This land is illegally subdivided into smaller lots because it does not comply with the requirements of the National Land Code, the Town and Country Planning Act, or other applicable laws. These smaller lots are then sold to buyers for the purpose of building residential houses.

The lack of a precise definition for lot lidi has caused confusion among the public in understanding its actual meaning. Some interpret lot lidi as narrow and small lots subdivided through unauthorized plans not approved by the authorities. Others equate lot lidi with the concept of shared ownership under Section 342 of the National Land Code. This confusion arises because lot lidi transactions are conducted outside the legal framework of land law, leading to various interpretations regarding lot lidi.

For example, in the Batu Pahat Municipal Council area, lot lidi is defined as narrow and elongated lots with an area of less than 5 acres, a minimum side length of 80 feet, and rectangular in shape, categorized for either agricultural or building use.

This study focuses specifically on lot lidi, which refers to titled land categorized for agricultural use or subject to conditions requiring its use for agricultural purposes. These lots are illegally subdivided through unapproved plans to create residential plots. The research also examines the sale of lot lidi conducted outside the framework of the National Land Code, which prevents the names of lot lidi buyers from being registered on the title documents due to legal restrictions on such transactions.

Instead of using Memorandum of Transfer (14A document) as required by land law, the sale of lot lidi is commonly only associated with the use of a Deed of Trust (DOT) and Sale and Purchase Agreements (S&P) between the involved parties. This research is centered on the sale of lot lidi using DOT and S&P.

Current Issues of Lot Lidi

From a legal perspective, the names of lot lidi buyers cannot be registered in the Land Title. This is because, for agricultural land, the National Land Code (NLC) prohibits the transfer of ownership to more than one person for every acre. To protect the rights of buyers, buyers and sellers will establish a Deed of Trust (DOT) to prove the buyer's ownership of the lot lidi.

Only one person will act as the Trustee for all the owners of the lot lidi, and only the Trustee's name will be registered in the Land Title Document. The Trustee could be the original owner, one of the buyers, or even an external party appointed by the buyers.

For example, if there are 12 buyers of lot lidi in one area, the Trustee's name will be registered in the Title Document to represent the other 11 buyers (Salkukhairi, 2016).

When the buyer's name cannot be registered, it raises several other issues, such as:

1. Difficulty transferring ownership to secondary buyers (Selangor Land and Mines Office, 2017).
2. Difficulty bequeathing the property after the buyer's death (Selangor Land and Mines Office, 2017).
3. Uncertainty about the exact location of the lots (Salkukhairi, 2016).
4. Ineligibility for government land acquisition compensation (Salkukhairi, 2016).
5. Risk of the original seller reselling the land to third parties (Rosli Zakaria, 2022).

Management of Land Administration in Lot Lidi Transactions

Fundamentally, lot lidi transactions occur outside the framework of the National Land Code (NLC). When such transactions are attempted to be carried out in accordance with the laws established by the NLC, land administration will reject them as they conflict with the NLC.

The transfer or lease of land from the landowner to lot lidi buyers is not permitted for registration because it contravenes subsection 205(3) of the NLC. Furthermore, land administration will also not approve applications for boundary subdivision by the landowner, as it violates subsection 136(1)(f)(i) of the NLC.

Moreover, actions by buyers that disregard the NLC, such as constructing buildings on agricultural land for residential purposes, are in violation of the implied conditions of use. Such actions constitute a breach of conditions and may result in the land being subject to forfeiture.

In this context, the unauthorized development of lot lidi is not recognized by land administration as legitimate development under the NLC framework. Any application involving the development of lot lidi will be rejected by land administration.

The Concept of Siyasah Syar'iyah

Siyasah syar'iyah refers to the relationship between an individual and the state, or between the ruler and the citizens (Al Qardawi, 1998). The duty of the ruler is to uphold justice in governance, while the responsibility of the citizens is to obey all directives issued, as long as they fall within the bounds of Islamic law (Al-Turkumani, 1984).

To determine whether the government's measures to regulate lot lidi align with the principles of syarak or otherwise, the researcher outlines the concept of siyasah syar'iyah and its foundational principles.

According to Ibn al-Qayyim, siyasah syar'iyah refers to actions that guide people toward maslahah (benefit) and away from mafsadah (harm), even if such practices were not specifically mentioned by the Prophet Muhammad (peace be upon him) or directly revealed by Allah (SWT) ('Adnan Ibrahim 'Abd, 2008).

Muhammad Abu Zuhrah defines it as anything done by a ruler to improve the affairs of the people, guiding them toward goodness and preventing harm (Al-Turkumani, 1984).

From Ibn Taymiyyah's perspective, siyasah syar'iyah represents the integration of authority and righteous administration that benefits both the ruler and the citizens (Al Badawī, 2000).

Based on these definitions, it can be concluded that siyasah syar'iyah is an Islamic government's practice, policy, or principle that aligns with the Quran and Sunnah, aimed at bringing benefit to both the ruler and the people.

Consideration and Comparison Between Maslahah and Mafsadah in Siyasah Syar'iyah

Maslahah (Benefits)

Maslahah refers to any action intended to bring about good for individuals or communities, whether worldly or spiritual, immediate or future (Al-Ghazali, 1356H). It is a guiding principle in Siyasah Syar'iyah, ensuring that governance prioritizes public welfare.

The importance of maslahah in siyasah syar'iyah is based on the fiqh maxim that states "التَّصَرُّفُ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالْمَصْلَاحَةِ". This maxim means that all actions taken in managing the affairs of the subjects are subject to the principle of maslahah. This principle is fundamental to siyasah syar'iyah, ensuring that every approach taken by the government aligns with maslahah (Al-Nadawi, 1983). A ruler who fails to consider maslahah not only causes their actions to be invalid in the eyes of sharia, but they will also incur the wrath of Allah SWT (Atiyyah 'Adlan, n.d.).

The parties who evaluate and determine maslahah are those who are recognized for their expertise in the field. Al Qarāfī stated, "There must be someone in a region who possesses expertise in the field of maslahah" (Basri Ibrahim, 1997).

The best method for evaluating maslahah is to do it collectively. This approach is known as ijtiḥād jama'ī (Wahbah Al Zuḥaylī, 1997). Islam encourages such practices because the collective opinion is closer to the truth than individual viewpoints, especially on issues involving public interests. The approach of ijtiḥād jamā'ī

has been advocated by several prominent intellectual figures in Islamic jurisprudence, including al Qardawi, Muḥammad ‘Abduh, Badi‘uzzaman al Nursi, and many others. In fact, it was also the practice of ‘Umar al Khattab (RA), who frequently consulted the opinions of other prominent companions in making decisions (Muhammad bin Syakir al Syarif, 2013).

Mafsadah (Harms)

In addition to maslahah, mafsadah (harm) is also taken into consideration in siyasah syar’iyyah. In fact, the factor of mafsadah takes precedence when there is a conflict with maslahah.

There are several qawa'id fiqhiyyah (juridical principles) related to mafsadah that are considered relevant to the issue of lot lidi being studied. Some of the qawa'id include:

الضَّرَرُ يُدْفَعُ بِقَدْرِ الْإِمْكَانِ

It means "harm should be avoided to the best of one's ability." One of the responsibilities of the authorities is to avoid and prevent harm before it occurs (Atiyyah Adlan, n.d.).

الضَّرَرُ يُزَالُ

It means "harm should be removed." This qā'idah focuses on efforts for restoration after harm has occurred. It is distinctly different from the previous qā'idah, which is aimed at prevention and protection (Atiyyah Adlan, n.d.).

يُتَحَمَّلُ الضَّرَرُ الْخَاصُّ لِدَفْعِ ضَرَرٍ عَامٍ

This qā'idah means "specific harm is endured to prevent general harm." The rationale is that if specific harm is permitted by Islamic law, it could lead to widespread issues in society (Atiyyah Adlan, n.d.).

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

It means "preventing harm is prioritized over bringing about benefits." The responsibility of the authorities is to realize maslahah and remove mafsadah (Atiyyah Adlan, n.d.).

الضَّرَرُ الْأَشَدُّ يُزَالُ بِالضَّرَرِ الْأَخْفِ

It means that greater harm is prevented by adopting the lesser harm. If faced with two options, both of which could lead to harm, the government should prioritize the course of action that causes the least harm (Al-Nadawi, 1983).

FINDINGS AND DISCUSSION

Based on the above discussion, the researcher can conclude several points, as follows:

Maslahah of Lot Lidi

The study found that the activity of selling lot lidi brings maslahah to certain groups in society, particularly those with low incomes due to its generally lower price. However, this maslahah must be considered in light of the mafsadah that may occur if such practices/policies are permitted.

Mafsadah of Lot Lidi

Based on the research findings, lot lidi can expose buyers to various risks, such as uncertain ownership under the KTN (National Land Code), overlapping claims from the seller's heirs after the seller's death, overlapping sales by the seller to a second buyer, and other risks.

Additionally, the activity of lot lidi can have broader implications for society and the nation. For example, it can affect environmentally sensitive areas, leading to floods and other issues. It may also negatively impact agricultural food production.

Based on these facts, the researcher believes the mafsadah from the lot lidi activity outweighs its maslahah.

Policy of Controlling Lot Lidi from the Perspective of Siyasah Syar'iyah

The researchers also found that the policy to control lot lidi aligns with the concept of maslahah and mafsadah in Islamic law. Such steps are not taken based on illegitimate interests from a religious perspective, but instead are based on the maslahah ammah (public interest).

Thus, in general, the researcher agrees that lot lidi should be controlled because it leads to various issues, and the policy and control measures for lot lidi align with siyasah syar'iyah.

CONCLUSION

From this study, it can be concluded that the government's land control policy regarding lot lidi is aimed at realizing the maslahah ammah (public interest) in the state and nation. This is because the mafsadah of lot lidi is quite significant and can have implications from various aspects, whether in terms of legal ownership, urban planning, safety, food security, social issues, and others. It can also have implications for various parties, including the buyers themselves, the community, and the country. Indirectly, the policy and control measures for lot lidi generally align with the principles of siyasah syar'iyah.

On the other hand, this study finds that the government is responsible for addressing essential needs by introducing appropriate mechanisms to ensure that property prices remain within the reach of most citizens, as well as facilitating homeownership through more reasonable schemes, such as building more affordable housing and ensuring the fair and equitable distribution of these properties. Such policies are required in siyasah syar'iyah. Allowing lot lidi activities is not the solution, as it may lead to greater mafsadah, which indirectly contradicts the spirit of siyasah syar'iyah itself.

REFERENCES

1. 'Atiyyah, 'A. (n.d.). Dawr al Qawa'id al Kulliyah fi Dabt al Siyasah al Syar'iyah.
2. Adnān I. 'A. (2008). Al Siyāsah al Syar'iyah bayna Ihtirām al Naṣ wa Ri'āyah al Maṣlahah. Majallah Jāmi'ah Tikrīt li al 'Ulūm al Insāniyyah, 11(15).
3. Al-Badawī, Y. A. M. (2000). Maqāṣid al Syarīah 'ind Ibn Taymiyyah. Dār al Nafāis.
4. Al-Ghazali, A. H. M. (1356 H). Al-Muṣṭasfa (Vol. 1). Maṭba'ah Mustafā al Halabi.
5. Al-Nadawi, A. A. G. M. (1983). Al-Qawā'id al Fiqhiyyah wa Athāruhā fi al Fiqh al Islāmī (Unpublished master's thesis). Kulliyah Al-Syarī'ah wa al-Dirāsāt al-Islāmiyyah, Universiti Umm al-Qurā.
6. Al-Qarḍāwī, Y. (1987). Ijtihad dalam Syariah Islam (H. A. Syathori, Trans.). P.T. Bulan Bintang.
7. Al-Qarḍāwī, Y. (1998). Al-Siyasah al-Syar'iyah. Maktabah Wahbah.
8. Al-Turkumani, A. B. K. (1984). Dawabiṭ al Milkiyyah fi Al Fiqh al Islami. Jami'ah al Imam Muhammad bin Su'ud al Islamiyyah.
9. Baharuddin, A. (2009). Takharruj dalam pembahagian pusaka Islam: Kajian di daerah Kota Setar (Unpublished master's thesis). Universiti Teknologi Malaysia, Johor.
10. Basri, I. (1997). Khilafiah, Bid'ah & Maṣlahah Umum. Darul Nukman.
11. Marbawi, M. T. (2016). Analisis Tanah Kepunyaan Bersama dalam Kanun Tanah Negara Dari Perspektif Islam (Doctoral dissertation). Universiti Sains Malaysia.
12. Muḥammad bin Syākir al Syarīf. (2013). Al Siyāsah al Syar'iyah: Ta'rīf wa Ta'shīl.
13. Pejabat Tanah dan Galian Selangor. (2017). Risiko beli tanah lot tiada geran individu. Retrieved November 13, 2022, from <https://www.facebook.com/ptgselangor/posts/1505811486108523>
14. Rosli, Z. (2022, September 18). Interview. [Personal communication].

15. Rusmiyati, A. (2021). Potensi rancangan perkampungan tersusun sebagai kaedah alternatif penyelesaian lot lidi tanah kategori pertanian. Universiti Teknologi Malaysia. Retrieved September 25, 2024, from <https://utm.my>
16. Salkukhairi, A. S. (2016). Ebook 10 Risiko Lot Lidi.
17. Salkukhairi, A. S. (2016). Kedudukan Surat Ikatan Amanah Dalam Urusan Jual Beli Tanah Lot Lidi: Adakah Melindungi Hak dan Kepentingan Pembeli? Retrieved January 28, 2017, from <https://www.facebook.com/salkukhairi.abdsukor/posts/1320405151332402>
18. Wahbah Al Zuḥaylī. (1997). *Al Ijtihād al Fiqhī al Hadīthī*. Dār al Maktab.