

A ADVOCATING ISLAMIC VALUES AND ETHICS IN LAND ADMINISTRATION

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B**Introduction**

C It is generally accepted that land represents the power, integrity and assets of every nation. We also learn from history that land has been the focal point of the rise and fall of a nation. The Palestinians and the people of Bosnia are fighting and have fought for what they claim to be their lands. Thus, proper administration of land and its right management are vital to ensure that valuable property entrusted by Allah (*swt*) to mankind is not left in the hands of those who simply aim for profits to be enjoyed by themselves personally, their family or their clan alone. Land is from Allah (*swt*) for His creations. Thus, along with its valuable resources, its needs to be administered and developed according to the injunctions laid down by Allah (*swt*). The divine law deals with both worldly and spiritual matters. It provides clear guideline to lead man in meeting his responsibilities. Land is undeniably a valuable asset in human life.

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The objective of this paper is to highlight some important ethical principles and religious virtues that can be injected in the administration of land by the authorities and be practised by the individual. Though some of the values may be in existence in the present land policy, it is argued that their presence is perceived more as part of the underlined procedures which need to be followed. As a result, there are still problems such as the lack of proper enforcement and amicable practices. One of the reasons can be traced back to the lack of understanding that Islam perceives all virtuous deeds as *ibadah* (act of submission), which goes back to the issue of faith and practising belief. This article focuses on the principles which can be adopted and practised derived from the *Shari`ah*. It is limited to the discussion of the duties and responsibilities of those entrusted in dealing with land including the land administrator, individuals, private and public bodies. In this paper, the term land manager is used to connote all individuals or bodies dealing with land, while land administrator is used to include both, those dealing with land under as part of an official duty or personal grounds; meanwhile management is used to represent the art of dealing with land. The scope of this paper is land *per se* excluding other properties that may legally fall within the concept of land.

F**G****H****I****Proper land management is a part of faith**

Since ancient times, people have been fighting among themselves to acquire land. In fact, Islam never prohibits mankind from acquiring property. It is

recognized as part of human necessity. There are many verses in al Qur'an which emphasize that land is for the human being to dwell on and enjoy as well as to take good care of (*Surah Al An'am* (6):142). Thus, Islam teaches us that making an effort to establish good land management is an act of faith, working on it is a religious duty, and neglecting it is a transgression of Allah's rules and orders. One who believes in Allah (*swt*) must believe that all his deeds (good or bad) will be recorded and he will be accountable to Allah (*swt*) on the day of judgement.

Thus, issues and problems concerning land management are not the duties of the governing authorities alone. Every Muslim has his own roles and duties to ensure that land is managed in the best manner according to the teachings of Islam for his betterment and the betterment of society as a whole. Allah(*swt*) identifies the persons who are not entitled to deal with properties as being those to refer to those who are weak of understanding (*Sufaha'*) (*Surah An Nisa'* (4): 5-6). This verse provides that Allah expects the best management of land to match the benefits it provides to the mankind. A man who lacks understanding will not be able to shoulder the great expectations of Allah (*swt*) from mankind. Nevertheless, Allah (*swt*) the Most Beneficent and the Most Merciful bestows upon us the right of ownership and enjoyment that entails certain responsibilities and accountabilities.

In another verse, Allah (*swt*) reminds us that although land is considered as property, it is actually a trial to all mankind. (*Surah al-Taghabun* (64):15; *Surah al-Maidah* (5):48) Hence, it should not be seen as a source of wealth alone. Instead, the right to enjoy land comes with social obligation towards the community as a whole. No one is allowed to claim land for himself thus giving him all the rights to deal with it in the manner he likes. He is again bound by the rules of Allah (*swt*). Islam also prescribes that any rule created by a human being which is for the betterment of the mankind deserves the right to be observed by all Muslims. This lies in the concept of public interest (*maslahah ammah*). The general rule is that the policy and the law created by human beings should not contradict the teachings of Islam. The object of the rule is again determined based on the objective of the *Shariah*. (*maqasid shariah*). Thus, any act of non-compliance is considered sinful.

Human Resource Management as part of Land Administration

Land management begins with the management of the person who is to take charge of the land ie, the policy maker or the land administrator. He must be a person competent to understand the criteria and the principles that he must possess as an efficient land administrator. These include a clear understanding of the questions: Who has appointed him? Who is the owner of the property? Answering these basic questions will prepare the man to be a land administrator with a purpose and knows why and how land should be managed. Thus, land management must involve both, the management of the intellectual and the spiritual part of the administrator. As far as Islam is concerned, there should never be segregation between man's role as a land administrator and as a servant of Allah (*swt*). In this respect, Islam identifies

- A the criteria that could be universally adopted irrespective of race or religion. Though Islam emphasizes on the importance of *tawheed* (oneness of God) and its relevancy towards better management; Islam also upholds other principles that are universally acceptable and practical. For this purpose, Islam introduced several guided juristic principles such as *ijtihad* (personal reasoning), *qiyas* (analogical deduction), *istihsan* (juristic preferences or equity in Islamic law), *istishab* (presumption of continuity) and several other
- B principles in order to provide the methods by which the rules of *fiqh* (science of the sources) enable Muslims to be able to cope with the latest developments in society. With these methodologies, Muslims will be able to apply the general rules of the principles to all circumstances and thus will align themselves to all circumstances through the ages. Therefore, if the land
- C administrator or the policy maker is a non Muslim, at least, he must realize that the accountability is always on him and none other.

- A manager must know how to plan for effective action. Planning means outlining clearly what he is supposed to do with clear objectives and methods to be followed. It represents a well-phased strategy coupled by step-by step
- D progressive work. The life and practices of the Prophet Muhammad (pbuh) have shown to us that his *daawah* (preaching) work was well programmed and smartly planned. The work runs under the clear vision of calling people the total submission to Allah (*swt*). Based on the clear vision, the mission was meticulously developed and followed by the preparation of human capital to carry out the mission. The study of the *seerah* (biography) of the
- E Prophet (*saw*) reminds us about the need to strategise and even to be tactical in dealing with our enemies. The authorities can ensure that all workers practise and uphold the rules by providing a code of ethics which summarizes the major elements of their duties.

- F Management of land must take into consideration all related matters such as the laws pertaining to *waqf*, inheritance, *Baitul Mal*, *wasiyat* etc. Those principles relating to land show that Allah (*swt*) never leaves man unguided. It is always the responsibility of the human being to practise all teachings of Islam since Islam is a way of life. In fact, it must also be understood that *Shari'ah* evolves within the framework ie, to set defining standards for Muslims to determine what is permitted and what is prohibited
- G Thus, Muslims' behaviour must be confined within the divine decrees as prescribed in the Qur'an and *As Sunnah*.

Man is a land manager appointed by Allah (*swt*)

- H Each and every one of us has a role to play and we shall be questioned by Allah (*swt*) in the Hereafter as to how we have accomplished our duty (*Surah al Zalzalah* (99):6-8; *Al An 'Am* (6):132). Even, if one is just a house husband, he is responsible for his family. Thus, as a person who is entrusted to administer land matters, a land administrator has an important role
- I which requires the right person with proper qualification to administer it. In relation to this, Islam teaches us that the basis for any judgement and decision is contained in the Divine Books of Al Qur'an and *Al Sunnah*

(*Surah An-Nisa'* (4):105). We will not go astray if we follow the teachings of Islam based on these two sources. However, in order to practise the understanding derived from the two sources, man needs to acquire a basic knowledge of language, history and the knowledge of *Asbab-al-Nuzul* (cause of revelation). In other words, he must be a sane person who is capable of differentiating between what is good and what is bad for him and for others. He must work hard to equip himself with the knowledge of Islam. Al Quran teaches us that the *Maqasid Shari'ah* (objective of the *Shari'ah*) is to protect five things ie, religion, life, intellectual, property as well as integrity and lineage (Al-Shatibi, 1996:326). Hence, the *maqasid Shari'ah* stands as a very basic guideline for any decision maker. It is reported that the Prophet (pbuh) said, 'Any man whom Allah has given the authority of ruling some people and he does not look after them in an honest manner, will never enjoy even the smell of Paradise' (*Sahih Muslim*, Vol 9, Book 89, Number 264, Ma'qil, <http://muttaqun.com/corruptleaders.html>). Even though Islam encourages its people to work hard, at the same time it makes *a'mal* (work) an obligation based on the capacity of the people. Al Hadi made the remark that Islam is the ideology of practice as much as it is the practice of ideology (*Al fikrah al-Idariyyah al-Islamiyyah wa al-Muqaranah*, 1976, in Mustaq Ahmad, 9).

A correct understanding of the concept of trust and duties as well as obligation in Islam will indirectly develop ethics and observation without the external orders from the authorities. The result is that the stronger *imaan* (faith) and understanding of Islam one has a better worker he becomes. Thus, it is crucial and necessary to ensure that all Muslims receive the right knowledge and develop a proper understanding of Islam.

Land Administrator is a Trustee

Being a vicegerent of Allah (*swt*) (*Surah Al Baqarah* (2):30; *Al Fathir* (35):39), a land administrator has an important role as one who is entrusted to manage, plan and set the policy for the administration of land as a whole. If, in the case of a land owner as a trustee, his scope of duties is centred around his duty towards Allah, himself and those who are under his guardianship, a land administrator carries an extra job scope. He is responsible for the whole country and its people. His responsibilities go together with his expertise. A land administrator is expected to perform his job honestly, diligently and in a trustworthy manner. The importance of having a correct understanding as a trustee of Allah is vital. It relates to the land administrator's awareness of his responsibilities that go beyond his office or his boss alone. Once a Muslim realizes that he is a servant of Allah (*swt*) it will guard him against any kind of breach of trust or any act of misappropriation.

For example, the National Land Code 1965 as the main legislation for the land system in Malaysia contains many provisions dealing with the powers of the Land Administrator. Its jurisdiction covers the power to dispose land and also to give other approvals for land dealings as well as other procedural matters. The nature of the job requires a high degree of honesty and diligence. In regard to policy, it must be assumed by a person

- A who is capable of understanding the expectations of the people and foundation of his religion.

In fulfilling his duties, a land administrator should avoid any conflict between self-interest, family interest or public interest. There should be no priority for his self-interest or any others who are related to him. Public interest

- B will become one of the bases of all decisions and judgements. There is no room for impartiality or bias. All are equal in the eyes of Allah (*swt*). Justice must be upheld and be seen and discrimination only belongs to uncivilized nations but not Islam. Man has been delegated the authority to own and deal with land but in a restricted manner. Allah (*swt*) prescribed the proper way of handling wealth and ownership. Allah (*swt*) allows us to own land but He never allows man to abuse authority in acquiring land or in the way he use it. In *Surah Hud* (11:85) Allah *swt* says that:

And O my people! Give full measure and weight in justice and reduce not the things that are due to the people, and do not commit mischief in the land, causing corruption.

- D Islam differs from capitalism which allows man to own property without any restrictions. Islam also differs from the communist system, which fails to recognize man's need ie, the desire to possess property. This goes against the nature of the human being himself. In all aspects of life, Islam subscribes to moderation.

- E The owner-trustee relationship lays the foundations to develop good behaviour among Muslims. It will curb immoral as well as illegal behaviour such as greediness, obsession and abuse of power. The relationship will also develop self-consciousness as well as the feeling that Allah is witnessing all acts thus reminding the Muslim of his duty towards Allah (*swt*) as well as society. The presence of a code of ethics is will certainly provide a guideline to all land owners especially the workers and the authorities who are entrusted to deal with land.

Guidelines for Land Use and Planning

- G The basis of land use is for the betterment of *yaumu ad dunya wa yaumul akhirah* (life in this world and in the Hereafter). It means that the use of land must be balanced between the benefit of the people in this world with consideration of the benefit in the Hereafter. In other words, any decision about land use and planning must be good for the people and should not contradict the teachings of Islam. In this regard, one should forego one's personal interests and give priority to any kind of actions that benefits the *ummah* (nation). The policy pertaining to land use in Malaysia lies not only with the people in the land office but also to those involved in planning. This shows that the management of land requires an integrated approach from all parties. It cannot be seen or handled individually. The teachings of Islam appreciate team work. There are many verses in al Qur'an as well as *ahadith* of the Prophet (pbuh) calling for brotherhood, congregational effort and cooperation. A Muslim who performs his prayers in congregation will

get more reward from Allah (*swt*) than one who decides to pray alone. Thus, it is important for all parties to possess the basic knowledge of becoming a good Muslim. A person practising the right understanding of religion will fear Allah (*swt*) and will never go against the teachings of Islam, though he may be left alone in a secluded place. Thus, faith is the best protector and path seeker. A Muslim will never be carried away by any mundane matters that promise only short-term happiness in this world. He will be more concerned about what he will enjoy permanently in the Hereafter. Indirectly, this kind of Muslim cannot be enticed with the promises of enjoyment and wealth in this world alone. Bribery and corruption have no place in the hearts of these people.

In Islam, Allah (*swt*) alone is the owner of the earth and all that it contains (*Surah Luqman* (31):20). Thus all property and resources are held in trust by human beings. Man can enjoy and utilize the land in accordance with the laws provided by Allah (*swt*). It is emphasized that 'People do not in fact own things, for the only real owner of things is the Creator, be He glorified and exalted. Indeed, people do not own anything but their usufruct in the manner permitted by the revealed law' (*Surah Al-Dukhan*(44):38-39). This verse explains man's right to enjoy Allah's creation but in the manner permitted by Allah. In *Surah Yunus* (10):14 Allah (*swt*) says:

Then We made you heirs in the land after them, to see how you would behave!

Allah (*swt*) also reminds us in al Qur'an that this world has been placed under man's responsibility, to care for it and not misused it (*Al Baqarah* (2):22.). Rivers, minerals and the sky are the property of all, irrespective of time and place. Thus, they should be distributed fairly and justly especially in a case where they are shared by more than one country. Thus, as a guideline, Islam prescribes principles pertaining to *musyawarah* (mutual consultation), tolerance and freedom, sacrifice and rights, *ihsan* (tolerance and consideration; observation) and *dharar* (harm), principles of sovereignty and non interference and many others. The management of land in Islam encompasses all the basic principles governing a human's life. A land manager must conform to and put into practice the teachings of Islam. There is no such line that determines how a Muslim should be in the office and at home. If he is a good Muslim, thus he is good either when he is alone or surrounded by people.

Being the vicegerent of Allah (*swt*), all the other creations are subjected (*taskhir*) to the human being. Although Allah (*swt*) explains in many verses that the heavens, the earth, the sea, the cattle, animals and much more are subjected to humanity, man, as a leader, is expected to use his intelligence (*a'qal*) to utilize all the benefits. In this, we find support and backing for the institution of *Khilafah* (vicegerency). Again, this will certainly help the human being to strengthen his role as the *Khalifah* on earth (*Surah Al-Nahl* (16):14; *Surah Ibrahim* (14):32; *Surah Sad* (38):36; *Surah Al-Zukhruf* (43):12-14).

Man also has a duty to make his life in this world meaningful (*i'mar*). He is required to dwell in the earth, work on it, and establish a balanced way of life without excesses or deficiencies. Here, *i'mar* indicates any positive acts that would make life on earth prosperous. If the acts cause man to deviate

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- A from the right path or result in damage to God's creation thus the act cannot be referred to as *i'mar*.

Principle of *Manfaah* (full use and benefit)

- B One of the main objectives of land management is to ensure that land in various sectors is properly utilized in order to maximize its use in all fields and in accordance with the injunctions of the *Shari'ah*. Land should not be left idle. It is the responsibility of those in authority, the land owner or anybody who is in possession of land to ensure that all lands in their charge are properly managed for man's personal benefit as well as the of the public at large. It is important to note that while in control of the land, man has a duty to share the benefits with others directly or indirectly, i.e. through tax contributions or donations etc. He should not practise monopoly where the land is simply use for his own benefit. Maximum use of land should never tolerate issues of damage (*dharar*). In relation to this, environmental issues such as sustainable development and pollution are cursed and prohibited in Islam. In this regard, Islam encourages the appropriate punishment so as to deter man from causing damage to the earth and its contents.

- E During the time of the Prophet (pbuh) as well as his companions, they exercised the right to take back land already granted to people for their failure to utilize the land. The land was later distributed to other people who were willing to work on the land. Saydina Umar gave three years for land owners to revive or develop the land given to them. If they failed todo so, the authorities should acquire the land and distribute the land to other deserving grantees (Qal'ahji, Muhammad Rawwas, *Ensiklopedia fiqh Umar Bin Khathab*, 1999, 14).

- F Man should acquire land or other properties by the proper means. Islam prohibits fraud, misappropriation, force or stealing others' rights. The rationale for all these actions lies in the direction and guidance on the relationship of man and society. No benefit or gain should be enjoyed at the expense of others' rights and interests. In fact, in the case of compulsory acquisition, Islam provides clear rules and ethics to be followed so that nobody shall become a victim of any unjust act and policy.

- G It is the obligation of every Muslim to improve and enhance the welfare of others, even when such enhancements may cause inconvenience or limit the freedom of the persons offering assistance. In one *hadith* the Prophet is reported to have said:

- H Whosoever removes a worldly grief from a believer, Allah will remove from him one of the griefs of the Day of Judgement (Sahih Muslim).

- I In the context of land management, it is to be borne in mind that any decision by the land administrator will directly or indirectly affect negatively or positively the future of others. For example, a decision to alienate a piece of land on the basis of *iqta'* or full ownership or under temporary occupation licence or lease will have a big impact as regards to how the applicant can deal with his land. Thus, an appropriate consideration based on all factors

and putting the welfare of the person as a priority and balancing this with public right will certainly produce a good and wise decision. In this respect, Islam orders the *ummah* to be just in dealing with others and assumes equal treatment for all. Islam promotes brotherhood. 'None of you (truly) believes until he wishes for his brother what he wishes for himself' (*al Bukhari, Sahih*; Muhammad Muhsin Khan, Kazi Publication, Vol 1: *Hadith* no12)

Maqasid Al-Shariah as the basis for land policy and Management

Land administration sometimes requires fast and prompt decisions concerning certain issues and problems. It is necessary for land administrators to equip themselves with knowledge of Islam so that any prompt decision is taken in the best manner after all the issues have been carefully considered. Understanding the purpose of a thing or law might help to resolve any problem related to it. In law, there are various ways to make the rules of interpretation to be as close as possible to the intention of the legislature. The objectives of the *Shari'ah* are to protect the religion, life, lineage, intellectuality, and property. A Muslim must know that property has the slightest value for consideration as compared to religion or faith. It is certainly wrong and sinful to ignore religion and uphold property under any circumstances surfaces. Islam perceives property as a mere worldly need that serves as a vehicle for obtaining permanent happiness and prosperity in the Hereafter. It should never be allowed to take priority over any Islamic injunction unless in a state of emergency or *dharurah*.

Malaysia as a multi racial society faces many challenges as regards the implementation of Islamic law. The challenge varies from the ignorance of the Muslim themselves to the need to satisfy the appeal of the non Muslim groups which prefer to reject the implementation of Islamic law to certain areas of laws. This has resulted in the existence of some un-Islamic elements in practice. The common dilemma is at how to avoid being trapped into adhering to this un-Islamic principle. It is proposed that at least, it is a duty of the authorities to provide an alternative solution for Muslims. They should not be locked into a system which is against their religious beliefs. It also requires efforts for judicial activism or judicial creativity. Thus, a proper understanding of *Maqasid Shariah* will help the Muslim to set his priorities clearly and without any doubt.

Muslims in Malaysia must understand that their rights to practise and propagate Islam are clearly spelt out by the Federal Constitution. (art 3). In other words, as a Muslim, his duties as land administrator are not only derived from the provisions of Islam itself but there are clearly stated in the various laws. Each and every Muslim has a legal duty to practise and protect Islam. This guideline should lay the foundations for all policies in Malaysia. Any Muslim land administrator must be well aware of his duty to protect and safeguard his religion within and outside his official duty. He should perceive the duty as part of his religious requirement and know that it is sinful for him to undermine any *Shari'ah* purpose. To strive for Islam is *jihad* (a struggle for the sake of Allah).

A Principle of *haqq* (right) and Moderation

Principles of Islam govern human behaviour and the excess contained therein. In relation to this, Allah (*swt*) enjoins us to do justice. (*Surah An-Nisa*' (4):134) Allah (*swt*) says:

- B** You who have *iman* (faith); be upholders of justice, bearing witness for Allah (*swt*) alone, even against yourselves or your parents and relatives. Whether they are rich or poor, Allah (*swt*) is able to look after them. Do not follow you own desire and deviate from the truth. If you twist and turn away, Allah (*swt*) is aware of what you do.

- C** Doing the right things at the right times is very much encouraged in Islam. It applies to everybody irrespective of their background or origins. They are subjected to the law of Allah (*swt*) based on their capacity and ability. Certainly, Allah (*swt*) never requires us to do anything that is beyond our capability (*Al Baqarah* (2):284–286). Thus, if we are entrusted to do any duty, we have to strive to do it completely and in the best manner. For example, Allah (*swt*) says: 'Hold to your agreement' (*An Nisa* (4):58), man should realize that being a land manager, be it under the capacity as a land owner or a land user, he has his promise to his Lord ie, Allah (*swt*) to take good care of the land and to manage it in accordance with the law of Allah (*swt*).

- E** The permission to enjoy and deal with Allah's bounties is not without any guidance. Allah through his Book and His Prophet clearly states that the right of enjoyment shall not be used excessively. Man should not transgress the limits prescribed by Allah. Man is prohibited from taking liquor or misappropriating others' rights. Even certain foods are not allowed to be consumed for reasons that only Allah knows best.

- F** The land administrator has a duty to ensure that all acquisition, disposition or any dealings pertaining to land are done within the limits of *halal* and *haram* (permissible and prohibited). The Muslim jurists have laid down a principle which requires that not only the ends sought must be right, but that the means to achieve those ends must also be right (Qureishi, 60).

- G** Islam requires the Muslim to avoid extravagance in spending even in the case of permissible things. 'And render to the kindred their due rights, as (also) to those in want, and to the wayfarer: but squander not (your wealth) in the manner of a spendthrift.' (*Al Isra*' (17):26, 29; 25:67; 7:31).

Principles of *Barakah* (God Blessing)

- H** Perhaps the main difference between the teaching of Islam and other religions is the belief that Allah's (*swt*) blessing is above any other rewards from Allah(*swt*) as far as these worldly matters are concerned (*Surah Al-Zukhruf* (43):32). *Barakah* is invisible and relative in nature. It is a grant that cannot be seen, measured or calculated in kind or money. It encompasses the whole spectrum of men's lives. A Muslim believes that the more righteous the conduct is, the more *barakah* his life is. A land manager or land administrator will translate the rewards for his conduct beyond the amount of salary or worldly rewards he receives. It is about how he is satisfied with his life as a
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whole even through his salary is not a five-figure one. He perceives his peaceful life and happy family as part of the reward of good conduct. If he never cheats, bribes, taking anybody's money without consent or deprive somebody's of their rights, he must be happy with his life and be thankful to Allah (*swt*). In this respect, Allah (*swt*) explains about the *barakah* of *sadaqah* (alms giving) and the consequences of *riba* (interest) (Surah *An Nisa'* (4):145). Allah (*swt*) promises an increase in property and devalued wealth in the case of *riba*. Thus, the belief in *barakah* (God blessing) in life would guard any person from evil conduct and unjust decisions and instead, develop sincerity, integrity and generosity. It is a great asset for developing human capital. It encourages good deeds and guards against evil conduct.

Principles of Compensation

Although Islam recognize Allah (*swt*) as the real owner of everything in this earth including land but Islam also recognize man as the trustee thus having the right to enjoy Allah's (*swt*) bounties. Therefore, no one has the right to take away the permission given by Allah (*swt*) and any act of preventing this enjoyment is prohibited by Islam. However, Allah (*swt*) also prescribes that the public needs should be given priority over any individual's right. Again, Allah (*swt*) the Most Merciful has prescribed that any man's right should be given proper compensation.

Similarly, Islam seriously calls for the strict protection of other's rights. This may be seen in many principles such as Islam prohibiting the encroachment on others right including rights to land. Any unlawful entry shall be considered as trespass and shall be liable to damages. Again, if the entry caused any damage to the property, the damage should also be properly compensated. Article 92 provides that:

'A person who does an act, although he does not act intentionally, is responsible'. Based on this provision, nuisance should not be allowed though the result of the action may arise without any intention of doing it. The Prophet (*saw*) also clearly declares that 'There shall be no damage and no infliction of damage'.

Principles of *A'dalah* (Justice and Equity)

Islam allows the interference on the part of the ruling authorities to secure the common welfare and eliminate injuries to society. This is, in fact, their original and primary duty. Land, being the main factor for development, requires a collective and integrated management so as to overrule the right of individuals or private rights. In line with this, the governing authorities have the right to reserve land for public purposes and to acquire land to be used by the public. This purpose to a certain extent allowed the government to acquire private land provided that adequate compensation is paid to the owner and any other persons who are affected by the process. Similarly, justice in Islam has no limit. Thus, a proper area must also be allocated for the preservation of wildlife, forests, water catchment, rivers and grazing areas. Allah (*swt*) reminds us that He created the earth for living creatures (*Surah Ar Rahman*

A (55):10). Therefore, the land management agenda should not put aside the issue of preservation of other flora and fauna. The issue of the environment is fundamental and crucial and should be part and parcel of land management as well.

B All land dealings must be carried out with honesty and sincerity. The Quran repeatedly condemns and expressly prohibits all kinds of unjust practices (*Surah al-Mutaffifin* (83):1-9). Unfair dealings are cursed. The Prophet (*saw*) reminded us that 'one who deceives is not one of us' (Muslim). Creating speculation is not permitted. Many learned scholars have written about the evils of speculation, guesswork or other transactions that are uncertain. (Mushtaq Ahmad, 1995, 117)

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Principles of social justice

D Emphasis on the principle that all things on the earth belong to Allah will develop an understanding that the use of the wealth of the earth is the common right of all creatures including mankind. No one has the right to take more than he or she requires or else that will deprive the rights of others. At the same time, Islam calls for the maximum utilization of wealth including land so that the community will receive an equal share of the benefits.

E The good management of land will certainly be able to solve not only economic problem but also social problems. The teachings of Islam never brush aside public matters. Islam emphasizes that if there is any conflict between the interest of the community and the interest of the individual, the public interest will always prevail. Any land administrator must withdraw himself from any decision that would create public concern as regards his biasness for any decision. Similarly, land administrators should also steer clear of any alleged conflict of interest arising from political relationships. In this regard, land management in Islam also includes matters pertaining to financial contributions including the collection and distribution of *zakat*, the management of *waqaf* (dedication of property in trust) properties, the distribution of inheritance and *hibah* (gift), *wassisyah* (wills) as well as *harta sepencarian* (matrimonial property).

G Good and fair management will certainly reflect an equal share of distribution of property. There should be no problem of poverty when there are wealthy men in a Muslim state. Islam determines that land should be granted equally for the individual and the community as a whole. The Prophet (*saw*) distributed land to his people based on their needs and contributions. It had been the practice that warriors were allocated lands from the war. Nevertheless, Saydina Umar refused to continue this practice and he raised his concern over the right of the public in the future when all lands had been distributed among the soldiers. The more vigorous the activities of any land, the more profit it shall give to the owner and the state. Contribution to the state should reflect the benefit to be enjoyed by the people as a whole (Muhammad Rawwas, *Ensiklopedi fiqh*, 9).

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Principles of *Dharar* (harm or damage) and *ihsaan* (improvement for the best)

The principles of land management must include the duty to avoid committing any act that may harm or damage others. The land owners as well as the governing authorities have the obligation to take the necessary measures and action in order to eliminate or minimize damage. In the *Forty Hadith* (Abdul Hayei Abdul Sukor, 1995:193) it was reported by Abu Ya'la that the Prophet (*saw*) to have said that Allah (*swt*) requested us to practise *ihsaan* (to do the best or to be good) in everything that we do in order to ensure good results. (*Surah Huud* (11):88) Thus, it is prohibited and sinful in Islam to create harm or to cause harm to others such as in the case of negligence. The government must have adequate laws to provide a basis for compensation for any mismanagement caused by the public authority when necessary. In this regard, it is mooted that any law which exempts the public authorities from any claim for negligence or misconduct is unjust. It is also the duty of the government to take all necessary action to avoid or minimize damage based on the application of the principles 'There shall be no damage and no infliction of damage' (*laa dharar walaa dhirar*).

Land development must consider sustainable factors in order to make it ecologically sustainable. It should be planned and carried out in accordance with natural constraints, ecological values and environmental balance. No development should lead to any kind of damage, harm, or degradation in the natural environment or others. Compliance with any rules that call for sustainable land development is a religious duty.

Man is not allowed to cause damage to this world in order to enjoy and traverse it. No man can forcibly take a thing from another. For this purpose, we are required to maintain the productivity of the soil, and not to expose it to erosion by wind, flood, rain or weak land as a result of excessive forestry activities, building construction, farming, mining and industrial activities. Man's activities should not only avoid degradation but actually preserve and enhance the earth's fertility. Many have failed to relate Allah (*swt*)'s bounties and creation as part of the duties of man to preserve them. Again, it is an act of worshipping Allah (*swt*). In addition to that Allah (*swt*) has promised us rewards for that effort.

The obligation requires man to avoid inflicting either physical or psychological harm on others and to avoid action that risk harming others. This should be a primary ethical principle. The Prophet (*saw*) is reported to have said that 'There should be neither harming nor reciprocating harm' (Ibn Majah, *Sunan*, Vol 3, *Hadith* No 2340, 2341) It is submitted that the biggest harm any land administrator has ever committed is when he fails to undertake his duties in the manner Allah (*swt*) has prescribed i.e. to disbelieve and to reject the guidance revealed in al Quran, (*Al Baqarah* (2):121,174, 264; *Surah An Nisa'* (4):38). A land owner, though his rights are well recognized under the law, is prohibited from causing any harm or nuisance to or trespassing on his neighbour's property. A neighbour is given the right to cut branches of trees growing in his land and he has the right to enjoy the fruit that falls into his compound.

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- A There are a number of legal maxims which provide for the general rule applicable to all related particulars. According to the law of *Mejelle* (cf, Mahmassani, p 151), legal maxims are designed to facilitate a better understanding of the *Shariah* and the judge may not base his judgement on the maxim unless the maxim in question is derived from the Quran or *ahadith* or supported by other evidences. Pertaining to the principle of 'harm'
- B alone, there are about five related maxims to explain about the principles pertaining to 'harm'. There are 'harm must be eliminated but not by means of another harm', 'a greater harm is eliminated by means of a lesser harm', 'harm is eliminated to the extent that is possible', 'a specific harm is tolerated in order to prevent a more general one' and also 'harm is not eliminated by means of a lesser harm.'. Through knowledge and experience, it is submitted
- C that the land administrator would be able to formulate a better policy as far as land administration is concerned.

Conclusion

- D In conclusion, land management is not confined to the management of land *per se* but encompasses the management of human conduct and attitudes. A correct understanding of man's role and duties would prepare a framework of good land management as prescribed by Allah (*swt*). Muslims will enjoy both the rewards as well the benefits emanates from good land management
- E in this world and in the Hereafter. Islam teaches us that man's acts in this world have their share in the life after death. Thus, it is important for all laws and policies to be designed in the manner required by Allah (*swt*). In this respect, Allah (*swt*) provided all the guidelines and sent the prophets to continuously remind human beings about their duty to follow the right path.

- F Any person who is entrusted with certain duties must understand that he owes the duty not only to the people but also to Allah (*swt*). He is answerable both in this world and in the Hereafter. Thus, the best investment or assets are his *imaan* (belief in Allah) and his honesty, the best *muhtasib* (the accountant, the supervisor, ombudsman) is his *taqwa* (fear to Allah) and the best *mua'llim* (teacher) is his *i'lm* (knowledge).

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