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RESEARCH ARTICLE

JOINT OWNERSHIP OF LAND: ISSUES AND SOLUTIONS ACCORDING TO THE NATIONAL LAND CODE 1965 AND ISLAMIC LAW

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Abstract

Joint ownership of land refers to the ownership of land by two or more individuals or entities in undivided shares, known as co-ownership under the National Land Code 1965. This form of ownership can potentially hinder efforts to develop or utilize the land. Therefore, this study aimed to identify related issues and propose appropriate solutions based on the National Land Code 1965 and Islamic law. This qualitative study employed a content analysis design and data as well as information were collected through document analysis, which were then analysed descriptively. Findings indicate various issues in relation to joint ownership of land, including the negative attitude of owners, sale of individual land share or portion by co-owners, partial land acquisition, quit rent (land tax) payments, inheritance distribution, and limited freedom to develop the land. Therefore, this study proposed several solutions including selling or leasing the land, partitioning the land, utilizing the takharuj (partner buyout) or muafakat (mutual agreement) methods, and incorporating the al-Syuf'ah concept into the National Land Code 1965.

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Introduction:-

A single plot of land in Malaysia can be jointly owned by multiple individuals. It is also known as Joint Ownership of Land, which is one of the issues that often arises when discussing various forms of land tenure in Malaysia (Mohd Marbawi et al., 2015). This type of joint ownership of land occurs when several registered owners represented in a single title deed have rights over the same piece of land. Since independence until 2020, there has been an estimated RM70 billion worth of unclaimed or frozen inheritance property in the country, with a significant portion consisting of neglected inherited land with multiple registered owners (Muhamad Razis, 2020). Hence, joint ownership of land raises numerous issues, particularly in regard to the development of the land. The difficulty and complexity of managing jointly-owned land, especially when it involves inherited property, has led to the abandonment of innumerable pieces of inherited lands. Therefore, this study aimed to discuss the challenges associated with joint land ownership and explore potential solutions for effectively managing jointly-owned land.

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Literature Review:-

1. The Ownership Concept

According to Shariah and the Shafi'i school of thought, ownership is a legal ruling determined by Shariah pertaining to the physical property or benefits granted to an individual that enables that individual to utilize and receive benefits from it (al-Suyuti, 1983). The Maliki school also holds a similar view (al-Qarafi, 2003). Meanwhile, according to the Hanafi school, ownership is the original capacity granted by Shariah to manage a property, except when there are restrictions, whereas the Hanbali school defines ownership as a legitimate ability to manage property (Ibn Taymiyyah, 1994). In the context of contemporary scholars, al-Khafif (2008) stated that al-milk refers to control over something that allows the owner to use and benefit from it as desired, unless there are prohibitions mentioned by Shariah. Al-Zuhayli (2009) views al-milk as an owner's privilege over something that prevents others from staking a claim or interfering. This privilege allows the owner to use and enjoy the property according to one's wishes, except when prohibited by Shariah.

According to Section 342(1) of the National Land Code 1965 (Act 56), 'joint ownership' refers the ownership of a delineated land by two or more individuals or entities with undivided shares. This provision does not limit the number of legal owners of a plot of land. Section 342(2) states that 'all alienated land vested in two or more persons or bodies shall be held by them as joint owners unless, pursuant to Sections 344 or 346, or equivalent provisions in previous land laws, are registered as trustees or representatives'.

Joint ownership of land can also be described as two or more individuals sharing ownership of a single plot of land, with their names recorded on the same land title. This is because the Land Office or Registrar cannot issue separate land titles for each owner. A land title refers to the Document of Title, as defined by the National Land Code (Suhaimi, 2016a).

2. Factors that Determine Joint Ownership of Land

Sections 342 and 343 of the National Land Code 1965 permit joint ownership as stipulated in the provisions. There are several circumstances that can give rise to joint ownership, including:

- When the State Authority approves the joint ownership of land to two or more individuals;
- Through land transactions (sale and purchase of land) or the transfer of ownership from a single seller to multiple buyers;
- Through the distribution of the estate upon the death of the owner to multiple heirs.

Issues in Joint Ownership of Land

1. Negative Attitude Among Landowners

According to Mohamed Khairi and Mazlan (2018), social relationship issues among joint landowners arise due to overlapping ownership, which often hinders land development. Joint owners should practice tolerance to ensure that the land is developed and not left idle. One major factor contributing to joint ownership is inheritance, where disputes often occur over who is responsible for managing overseeing inherited land. According to Wan Abdul Halim (2011), this situation occurs because some heirs merely want their names registered in the land title as owners but have no interest in jointly developing the land, while other co-owners may want to utilize the land to generate income.

Conflicts sometimes arise among landowners due to differing opinions on how to develop the land. Wan Abdul Halim (2011) also opined that these jointly owned lands remain abandoned due to the failure to reach a consensus on proposed development plans. This could also occur because some owners may wish to engage in dynamic agriculture activities, such as commercial farming, to maintain traditional concepts. However, others may prefer modern development projects, such as residential or commercial housing projects. These differing views lead to the land being neglected because the absence of a unanimous consensus makes it difficult to secure loans or financing from banks or financial institutions. Financial institutions are hesitant to provide loans due to the lack of agreement on the project and the absence of a guaranteed consensus (Mohamed Khairi & Mazlan, 2018).

A notable case illustrating social issues among landowners is the case of Goh Giok Bee vs. Goh Kian Seng (2012) in the High Court of Malaya, Melaka (Civil Suit No. 22NCVC-1309 of 2012). In this case, both parties were siblings. The elder brother, Goh Giok Bee, was dissatisfied that his younger brother had developed the land and thus, laid claim to a sum of RM783,794.34, alleging it was a debt due to the use of jointly owned land without his permission. The court ruled that the plaintiff had no right to claim damages or rent because the jointly owned land was

undivided. Therefore, both parties had the right to use and enjoy the entire land until it was formally subdivided (Suhaimi, 2016b).

2. The Issue of Selling One's Share or Portion of the Jointly Owned Land

Joint landowners need to practice and maintain a high level of understanding and compromise to develop and manage their land collaboratively. This collaboration allows them to share facilities, such as access roads, pathways and drainage systems. However, it is undeniable that some co-owners may need to sell their share due to financial reasons, which is legally permissible under the National Land Code. The issue arises when a co-owner sells his/her share to an outsider who is not one of the remaining joint owners. This can complicate the land's development, as it would be more practical to sell the share to an existing co-owner (Suhaimi, 2016a). For example, if a younger sibling, who owns half of the land, sells his/her share to a third party, it can create conflict between the elder sibling and the new owner, especially if the land is undivided. This would make it very challenging to manage the farm or land. In another scenario, if the land is already divided based on consensus, complications can still arise. For example, the elder sibling may own the rear portion facing a river, while the third-party buyer might have acquired the front portion with road access. Hence, if the new owner restricts access to the road, the elder sibling will undoubtedly face difficulties.

As a responsible co-owner, especially in cases where the land is jointly owned by family members or relatives, it is crucial to prioritize the selling of one's share in the land to other co-owners. Offering the share to existing co-owners first helps maintain a good relationship and ensures smooth land management. However, if existing co-owners are not interested, only then should the share be sold to an outsider. This practice helps preserve harmony and good-will among the landowners.

3. The Issue of Partial Land Acquisition

According to Suhaimi (2016a), one of the challenges in joint ownership of land arises during partial land acquisition. Each joint owner typically has an informal verbal agreement about their respective portion of the land. For example, the elder brother might own one-third on the right side, the younger brother one-third in the middle, and the sister one-third on the left side. The problem arises when only a specific portion of the land, such as the elder brother's share, is subject to compulsory acquisition. Under these circumstances, the compensation for the acquired portion is distributed among all registered owners, not just the one whose portion was acquired. This is in line with Section 343(1)(b) of the National Land Code, which states: "They may at any time apply for subdivision of the land under Chapter 2 of Part Nine, but as long as their co-ownership continues, each shall be entitled to the ownership and enjoyment of the whole". Since all co-owners are eligible and can receive the compensation, even if only one person's share is affected, it becomes necessary to redefine the land plots to ensure fairness for all. However, this process can be complex and challenging to implement (Suhaimi, 2016a).

4. The Issue of Paying the Yearly Quit Rent (Land Tax)

Every landowner, or heir, is responsible for paying the yearly quit rent (land tax). Each year, the Land Office reminds landowners to pay their quit rent by issuing the Land Tax Bill to all landowners. Landowners are encouraged to make payments before May 31st of each year to avoid fines or arrears. However, if they fail to pay the quit rent before May 31st, they will be reminded again with the First Reminder Letter, which includes the quit rent amount plus penalties. However, if the landowner still does not pay the quit rent by October, a Second Reminder Letter will be issued and lastly, in December, the Land Office will issue the Red Letter, indicating an Outstanding Quit Rent Bill, to landowners who are yet to make the payment (Akmall Ersyadiah, 2016). Landowners who fail to pay the quit rent could face the confiscation of their land. Shared ownership of land complicates tax payments if a consensus is not reached by all the landowners. The self-centred attitude of some landowners also makes annual land tax payments difficult, while negligence among co-owners further worsens the situation. The issue of annual land tax payments will not arise if the owner with the largest share in the jointly owned land willingly pays the tax (Suhaimi, 2016a).

5. The Issue of Inheritance Distribution

Most cases concerning land with multiple owners arise from inheritance distribution, although some result from joint purchases involving business partners. Joint ownership of inherited land is generally not an issue if the land is subdivided; however, problems arise when the subdivision is not carried out. When multiple generations of deaths occur without proper and timely subsequent subdivision, it becomes increasingly complex to manage the subsequent distribution of the land, leading to a growing number of heirs. One example is Lot 2248, Grant Mukim 669, Mukim

Dengkil, in Sepang District covering 11.325 acres. Initially, the land was owned by nine individuals. After the death of one owner, Sayian binti Karim, her share of 164/225 was transferred to her 31 heirs, increasing the total number of owners to 39 (Suhaimi, 2016a).

6. Limited Freedom to Develop the Land

According to Mohd Khairy and Azwan (2016), inheritance distribution through faraid is a general division and distribution of all the deceased's property, without distinguishing between movable and immovable assets. This often results in land being subdivided or jointly owned due to a literal understanding of faraid distribution. Subdivision can be carried out without any issue if heirs do not wish to share ownership of a piece of land; however, the problem arises when the heirs take no action to manage the inherited land. This is because joint ownership complicates land development since consent from all owners is required to implement the development (Mohd Khairy & Azwan, 2016). Consequently, efforts to develop the land are limited, as co-owners of the land struggle to secure financial assistance from institutions (Azima & Ismail, 2011).

Proposed Solutions Based on the National Land Code 1965 and Islamic Law

1. Sale or Lease of Land

Wan Abdul Halim (2011) suggested that inherited land should be sold or leased, and the proceeds divided among the heirs in order to address the issue of land fragmentation or joint ownership, as outlined in Sections 15 (c) and (d) of the Small Estate (Distribution) Act 1955 (Act 98). Proceeds from the sale can be enjoyed by the heirs by selling the land to a third party, although they will lose the land that was left by the previous owners (parents etc.). According to the study, leasing the land allows the heirs to enjoy the benefits of the land throughout the lease period, while still retaining ownership of the land. Therefore, the leasing method is considered more practical (Mohd Khairy & Azwan 2016).

2. Partitioning of the Land

Partitioning the land will create separate ownership rights over each portion of land that has been divided accordingly, resulting in the termination of joint ownership of the land. This partition process will lead to each landowner, who previously shared ownership of a single plot of land, to receive their respective portion and hold separate title deeds for each of their own portion of land (Rusnadewi & Nor Hisyam 2010). The partition process allows a piece of land owned by two or more co-owners to be divided, enabling each owner to exercise control over the land under separate ownership rights. For example, Mr. X and Mr. Y are co-owners of a 10-acre plot of land. They agree to partition the land into Lot A and Lot B, where Lot A is held by Mr. X and Lot B is held by Mr. Y. After the partition, they no longer share ownership under the same title deed. However, they will each receive their respective portion of the land based on their ownership percentage. They will then each receive new title deeds issued by the Land Office or Registrar, whereby Mr. X will receive a title deed for Lot A, and Mr. Y will receive a title deed for Lot B. This partition will enable co-owners of a single plot of land to receive their respective portions and hold separate title deeds for their respective part of the land. This method also allows them to develop or manage their own portion of land.

3. Takharuj or Muafakat

When joint ownership of land occurs due to inheritance, takharuj or mutual agreement among heirs entitled to the inheritance can serve as an alternative to the distribution of inheritance property through faraid (Ahmad et al., 2019). According to Ahmad (2017), takharuj is a concept where heirs entitled to inheritance property reach an agreement allowing one or more persons to voluntarily withdraw from receiving the inheritance property. They can then transfer their share to one or more remaining heirs. In return, they could receive a compensation agreed upon by all parties, either from the inherited property itself or from the personal assets of the recipient heirs, or withdraw voluntarily without compensation. There are three forms of distribution according to the takharuj concept (Ali & Ahmad, 2013), including:

- An heir withdraws voluntarily without making any claim on the inheritance.
- An heir withdraws in exchange for partial compensation from the deceased's estate.
- Payment is made using assets other than the deceased's property to the heir who withdraws his/her rightful claim to the inheritance property.

Implementation of the takharuj method should be carried out after the heirs have been informed of their respective share in the inheritance property and only when they understand their entitlement can they proceed with takharuj, whereby they can willingly withdraw from claiming the inheritance.

4. Incorporating the al-Syuf'ah concept into the National Land Code

Syuf'ah is the right granted to a co-owner to forcibly repurchase a property from a new owner if the former co-owner sold the property without the other co-owner's knowledge or without first offering it to the other co-owner. For example, Ali and Abu jointly own a 10-acre plot of land. Due to financial difficulties, Ali decides to sell his portion. However, he sells it directly to a third party without first offering it to Abu. Consequently, Abu has the right of syuf'ah, which allows him to compel the third party to sell the land back to him at the same price. The al-Syuf'ah concept serves as a solution to issues faced by co-owners of shared property. According to Mohd Marbawi et al. (2019), this concept aligns with Islamic principles that aim to eliminate detriment to an individual as well as others. When properly applied and adhered to, the al-Syuf'ah principle helps address issues related to the sale of one's share in jointly-owned property and the involvement of third parties in a joint ownership.

Conclusion:-

It can be concluded that joint ownership of land often gives rise to various issues among co-owners. Some common problems include negative attitudes among co-owners, sale of a share or portion of the land owned by a co-owner, disputes related to partial land acquisition, quit rent (land tax) payments, inheritance distribution issues, and limited freedom to develop the land. Nevertheless, several solutions have been proposed under the National Land Code 1965 and Islamic law, such as selling or leasing the land, partitioning the land, utilizing the takharuj or mutual agreement method, and incorporating the al-Syuf'ah concept into the National Land Code 1965.

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