Faith Meets Formulation: Dissecting Property Dynamics Through *Taḥdīd al-Milkiyyah*, *Intizā' al-Milkiyyah*, and Malaysia's Land Acquisition Law

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Muhamat Faizal Marjani,[1*] Nor Fahimah Mohd Razif[1] & Abdul Karim Ali[1]

1 Department of Fiqh dan Usul, Universiti Malaya, 50603. Wilayah Persekutuan Kuala Lumpur, MALAYSIA.
Email: faizalkarqun@gmail.com; norfahimah@um.edu.my; abdkarim@um.edu.my

*Corresponding Author email: norfahimah@um.edu.my

Abstract

This study critically analyses the Land Acquisition Act 1960 of Malaysia (Act 486) through the lens of Islamic principles, specifically focusing on *taḥdīd al-milkiyyah* (limitation of ownership) and *intizā' al-milkiyyah* (expropriation of ownership), employing a qualitative methodology grounded in grounded theory. To ensure validity, data from diverse sources were triangulated. The research reveals a nuanced relationship between the Act 486 and Islamic legal principles, centred around the concept of public interest. Notable case studies, such as land acquisitions under the Federal Land Development Authority (FELDA), were examined to delineate the profound cultural and socio-economic repercussions of these legal interventions. Although Act 486 predominantly aims to serve the public good, it diverges notably from several Islamic concepts of property rights, pinpointing a legislative gap. There is a pronounced absence in the Act regarding the protection of essential needs and ensuring beneficence, which are core to Islamic doctrine. The discrepancies underscored suggest an urgent need for legislative reform to align the Act more closely with the *maqāṣid al-sharī`ah* (the objectives of Islamic law), which seeks to preserve the welfare of the people, encompassing socio-cultural integrity alongside economic development. This study contributes to a deeper understanding of land acquisition laws, advocating for a legal framework that harmonizes statutory regulations with Islamic ethical principles, fostering an environment that supports economic advancement while respecting socio-cultural ethos. Future research should explore the practical impacts of proposed legislative changes, engage multidisciplinary perspectives, and extend these insights to analyse the applicability in similar legal and cultural contexts, thereby broadening the discourse on integration between secular laws and Islamic principles.

Keywords: *taḥdīd al-milkiyyah*, *intizā' al-milkiyyah*, Land Acquisition Act 1960, land acquisition in Islam, *maṣlaḥah*.

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Introduction

Understanding property rights in Islamic jurisprudence is crucial as it underpins ethical transactions in Muslim societies, ensuring fairness and justice. These rights facilitate the harmonisation of secular and religious legal systems, the resolution of disputes, and the

formulation of laws that respect both traditions. Additionally, Islamic jurisprudence promotes just and sustainable property management by emphasising moral responsibility and fair resource allocation.

Islamic jurisprudence, in contrast to conventional property ownership systems, emphasises ethics as an important factor in ownership in addition to justice for the owner and a balance between individual and communal rights. Ownership divestiture occurs when unethical land procurement practices are used to some level. Since Islamic jurisprudence interprets ethics from a Shariah perspective, it differs somewhat from conventional beliefs in this regard. Certain actions, including procurement through gambling, are deemed unethical in Islamic jurisprudence even though they are not in the view of conventional beliefs. For instance, conventional ownership practitioners view it as just and lawful when a man wins a house through a lottery. He is the legitimate owner and is free to do with the house as he wishes. However, in Islamic views, winning a house through a lottery is an invalid and unlawful transaction and does not confer ownership or any associated rights to utilise or dispose of the property as one pleases.

Thus, the objective of this paper is to dissect Islamic land ownership restrictions and their implementation in land acquisition law. Malaysia's land acquisition law is selected as a basis for comparison, with several cases of land acquisition occurring in FELDA serving as examples. The results will guide an analysis of the possible gaps in implementing Islamic jurisprudence in existing law by exploring the challenges of implementation and providing suggestions to promote conformity.

Methodology

This research adopts a qualitative approach, specifically employing grounded theory methods. Creswell and Poth categorise qualitative research into five types, namely: (1) narrative research, (2) phenomenological studies, (3) grounded theory studies, (4) ethnographic research, and (5) case studies (Creswell & Poth, 2018). In this study, data are derived from literature discussing *taḥdīd al-milkiyyah* (limitation of ownership), *intizā' al-milkiyyah* (regulation of ownership), and *maqāṣid al-sharī`ah* (higher objectives of Shariah). To ensure the credibility and accuracy of the theories, a triangulation approach is applied. Information on Malaysia's land acquisition system, codified in the Land Acquisition Act 1960 (APT 1960), is gathered, and analysed alongside secondary sources that provide insights into the nation's land purchase statutes.

Land Acquisition: Its Importance to Nation

Understanding the Land Acquisition Act of 1960 is paramount in comprehending Malaysia's land purchase laws. This act, which was created to control land reclamation procedures, ensures compliance with the Constitution of the Federation of Malaysia. Embedded in Article 13 of the constitution is the principle that asserts that any property acquisition without legal authorisation is unlawful and requires fair compensation for any land that has been acquired.

The act includes provisions for the acquisition of various types of land, whether individual, customary, or reserved (Noor 'Ashikin Hamid, Noraida Harun, & Nazli Ismail,

2011), based on the land's importance to public welfare and community benefits. Moreover, the law is intricately entwined with Malaysian society's socioeconomic structure and spiritual ethos, including more than just legal and commercial operations. This intricate relationship is consistently echoed in various case studies and academic analyses, emphasising the profound implications land acquisition holds in both tangible and intangible spheres of societal development.

Malaysia's Land Acquisition Act 1960

The Land Acquisition Act (or *Akta Pengambilan Tanah* abbreviated to "APT") in Malaysia, particularly articulated through Section 3 APT 1960 [Act 486], delineates the jurisdiction of the State Authority (PBN) in acquiring land for several specified purposes. These include public amenities, initiatives deemed by the PBN as beneficial for Malaysia's economic development or the public interest, and for purposes like mining, housing, agriculture, trade, industry, or recreational activities (Noor 'Ashikin Hamid, Noraida Harun, & Nazli Ismail, 2011).

The acquisition of land, especially for commercial and business development, has been sanctioned by the court, as evidenced in the case of *Menteri Besar Negeri Sembilan (Incorporated) v Pentadbir Tanah Daerah Seremban & Anor* (1995) *3 MLJ 710*. Moreover, the State Authority is empowered to acquire land for itself or on behalf of others under various subsections of Section 3, with amendments post-September 13, 1991, broadening the scope to acquire land for any entity or purpose perceived as beneficial for Malaysia's economic trajectory or for any segment of the general public (Noor 'Ashikin Hamid, Noraida Harun, & Nazli Ismail, 2011).

Every acquisition must adhere to predetermined procedures and undergo meticulous scrutiny to ascertain that it aligns with the public interest (Noor 'Ashikin Hamid, Noraida Harun, & Nazli Ismail, 2011). Section 68A fortifies the Act by specifying that the acquisition of land for economic developmental purposes cannot be questioned in court, ensuring a lawful safeguard against any subsequent disposal or usage that renders the acquisition invalid. This prioritisation of public interest over individual interest in legislative contexts is underscored by Justice Hashim Yeop Sani in *S. Kulasingam & SL v Pesuruhjaya Tanah Wilayah Persekutuan and others* (1982) *1 MLJ 2004*. He elucidated that while Article 13 of the Federal Constitution sanctifies private property, its Clause (2) allows a provision for general rights, rationalised in the doctrine "*salus populi supreme lex*" (the welfare of the people shall be the supreme law). Thus, private interests may be sidestepped in favour of paramount public interests when deemed necessary by the State.

Land Acquisition at Felda

The transition of FELDA territories, marked by significant land acquisitions such as those in FELDA Sungai Buaya, FELDA LBJ (Lyndon B. Johnson), FELDA Sendayan and FELDA Cahaya Baru (Othman, 1998; Mohd Azlan Abdullah, Noraziah Ali, & Mohd Fuad Mat Jali, 2002), underscores a strategic shift from traditional agriculture to more dynamic, profitable sectors. This transformation, while heralding industrial and commercial progress, concurrently

imposes a reduction in agricultural zones, challenging national food security through increased reliance on imports (Mohd Azlan Abdullah, Noraziah Ali, & Mohd Fuad Mat Jali, 2002).

The redevelopment of FELDA LBJ into the Negeri Sembilan Technology Corridor (KTNS) or ENSTEK epitomises this trend, driven by broader developmental pressures from adjacent regions like KLIA and Putrajaya (Mohd Fuad Mat Jali & Noraziah Ali, 2000). This initiative, involving substantial land purchases by entities such as Perbadanan Kemajuan Ekonomi Negeri Sembilan (PKENS) and substantial settler compensation (Mohd Azlan Abdullah, Noraziah Ali, & Mohd Fuad Mat Jali, 2002), forecasts a future where high-tech industries, including biotechnology and ICT, dominate the landscape, replacing traditional agricultural vocations (Utusan Malaysia, 2000).

However, this transformation calls into question the socioeconomic inclusion and cultural sustainability of the local population, particularly the Malay community, whose agricultural livelihoods and their only lands are being replaced by these modern industries. These regions' cultural and demographic composition is also changing irreversibly, with developers reaping large gains at the potential expense of the legacy and social responsibilities of the original inhabitants. Despite these challenges, Bandar Enstek, a hallmark of this transformation, thrives as a nucleus of holistic urban growth and education, attracting notable investments and institutions due to its robust infrastructure and strategic location (Asmadi Hassan, Mohd Ikbal Mohd Huda, & Rohayati Paidi, 2016; Siti Nurazlinee Azmi, 2013). This evolution, while propelling economic advancement and urbanisation, necessitates a delicate balance between progress and the preservation of the socio-cultural identity of the indigenous communities.

Taḥdīd al-Milkiyyah and *Intizā' al-Milkiyyah*

Both conventional and Islamic economic systems recognise the importance of land as a component of the production system (M. Arsyad Kusyasy, 2003). R. Van Dijk further expands this by affirming land as the primary capital. In Islamic jurisprudence, Allah Ta'ala is ultimately the owner of the land, as illustrated in Surah Ali Imran, verse 189, and Surah al-Baqarah, verse 29 (M. Arsyad Kusyasy, 2003).

In Islam, while land is seen as belonging to God, individuals are still acknowledged as having the right to own and protect it. Wealthy individuals are allowed to manage their assets as they choose, if they follow Shariah law in every transaction and ensure that their property does not harm others or the community (Siti Mariam Malinumbay, 1998).

This leads to the notion that in Islam land ownership is embodied as "*waẓīfah ijtimā`iyyah*" (social function or social responsibilities), which implies that owners are not free to use the property (land) in whatever way they like. Instead, it should be employed for the benefit of the community or oneself without endangering others and within the boundaries set by Allah Ta'ala (Abdul Hamid Mutawalli, 1977; M. Arsyad Kusyasy, 2003).

Further, Ida Madieha (1995) encapsulates property ownership in Islam into five concepts: (1) All existence and execution of rights (including property ownership rights) must be consistent with the will of the Shariah, (2) the implementation of any right is supported by recognised *maṣlaḥah* (consideration of public interest), (3) although in the case of individual

rights (*ḥaq ādamī* or *ḥaq shakhṣī*) in various classifications of rights in Islamic law, this right is limited by the restrictions (*quyūd*) determined by the consideration of *maṣlaḥah*, (4) similarly, property rights (*ḥaq al-milkiyyah*) are not free from these restrictions, (5) imposing a limit on the ability to perform lawful acts (*ibāḥah*) is accepted in Islamic law when necessary.

"*Taḥdīd al-Milkiyyah*" or the limitation of ownership is a provision set by the government regarding the maximum limit of property, whether movable (*al-manqūl*) or immovable (*al-`iqār*), that an individual can own (Muhammad Abd al-Jawwad, 1391H). Furthermore, the Islamic government has the right and authority to limit ownership rights (*taḥdīd al-milkiyyah*) based on the actions of Caliph Umar al-Khattab, which provides a foundation and precedent for this concept in Islamic law (Ali al-Khafif, 1383H; M. Arsyad Kusyasy, 2003).

This precedent always initiates an in-depth debate regarding the consideration of *maṣlahat* (interest to prevent any destructive action according to Shariah) in enforcing limitations on land ownership, based on the parameters of *qawaid fiqhiyyah* (legal maxims) and *maqāṣid al-sharī`ah* (higher objectives of the Shariah).

In the discipline of *maqāṣid al-sharī`ah*, al-Darīnī predominantly argues that the objective (*maqasid*) of the Shariah is to achieve justice (*`adalah*). Therefore, the enforcement of rights that conflict with the objectives of the Shariah and contradict the concept of *`adalah* (justice) will undermine the original purpose and function of those rights. Legitimate rights are not an end in themselves (*ghāyah*), but rather a means (*waṣilah*) to uphold justice and achieve other higher objectives set by the Shariah. Al-Darīnī advocates for state intervention, whether in limiting ownership rights (*al-milkiyyah*) or other rights, in the name of public interest (Al-Darīnī, 1977).

Al-Jawwad and Ali al-Khafif present nuanced perspectives on the limitations of property ownership, particularly concerning land, within an Islamic context. Al-Jawwad posits that *taḥdid al-milkiyyah* pertains to governmental stipulations regarding the maximal limit of wealth an individual can possess, highlighting a structured approach to wealth distribution and ownership in society (Muhammad Abd al-Jawwad, 1391H). On a related note, Ali al-Khafif asserts that the government holds the authority to impose constraints on property ownership, such as land since Allah Ta'ala does not bestow 'absolute land ownership' upon individuals. He analogises this to the legitimate regulation of pre-emption (*syuf`ah*) and emphasises that Islam itself forbids hoarding wealth to prevent the circulation of riches exclusively among the affluent (M. Arsyad Kusyasy, 2003). Both perspectives underscore a distinctive Islamic viewpoint that balances individual ownership rights with broader socio-economic equity and ethical principles.

Aside from *taḥdīd al-milkiyyah*, there are other provisions that also play a role and function in land ownership restrictions. One such provision is *intizā' al-milkiyyah* (ownership divestiture). Divestiture of ownership is not a prerogative power granted for arbitrary implementation by the State. Instead, the power to strip ownership is a form of control permitted by the Shariah to the State to be executed for specific purposes. Among these are to uphold justice and prevent oppression, such as ownership of wealth obtained through unlawful means (theft, fraud, or error).

Those tasked with rendering judgments, such as a judge (*qaḍī*), are not beyond error. Nonetheless, upon the discovery of such oversights, there is a firm commitment to instituting

remedial actions to amend any misjudgements. For example, if a *qaḍī*'s ruling on inheritance distribution is later challenged by new evidence necessitating an alteration, the principle of *intizā' al-milkiyyah* empowers the *qaḍī* to retrieve the misallocated property and redistribute it to the rightful heirs.

Within the framework of *qawaid fiqhiyyah*, the principles of *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah* resonate with various established fiqh maxims. Such prominent maxims are: (1) harm must be removed (*al-ḍararu yuzal*), (2) enduring a lesser harm to prevent a greater one (*yataḥammalu al-ḍarar al-akhaffu li daf`i al-ḍarar al-ashaddu*), (3) tolerating specific detriments to avoid general harm (*yataḥammalu al-ḍarar al-khaṣṣ li daf`i al-ḍarar al-`āmm*) or prioritising general benefit over specific benefit (*taqdimu al-maṣlaḥah al-`ammah `alā al-maṣlaḥah al-khaṣṣah*), (4) preventing harm takes precedence over deriving benefit (*daf`i al-mafāsid muqaddimun `alā jalb al-maṣāliḥ aw al-manāfi'*), (5) extreme necessity allows for prohibited actions (*al-ḍarurat tubiḥa al-maḥẓurat*), and (6) the action of the ruler on their people is based on *maṣlaḥah* (*taṣarruf al-imām `alā ra'yatihi manūṭu bi al-maṣlaḥah*). Hence, the legal maxim permitted the State to carry out *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah* in the form of land acquisition but requires judicious execution. This involves strictly upholding *maṣlaḥah* by carefully weighing the possible benefits and detriments that arise or might arise from such land acquisition.

The concepts of both *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah* have been applied, albeit unconsciously, in the land acquisition laws of various countries, including Malaysia. Here, 'unconsciously' denotes the incorporation of these concepts into the legal system governing land without a precise and formal introduction of the concepts into the law. This implies that the action of the State to reclaim land from the ownership of individuals is a crucial instrument for a social system, to the extent that society itself could introduce and legitimise a proper land acquisition system. However, whether the land acquisition system, structured by society, adheres closely to the spirit of the Shariah, presents another issue to be addressed in this article, especially in the context of Malaysia's land acquisition law.

The Lights of Islamic Principles in Land Acquisition Act 1960: A Maqāṣid al-Sharī'ah Analysis

As previously mentioned, both *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah* can be implemented through the process of land acquisition where *maṣlaḥat* is evident. The significance of *maṣlaḥat* is comprehensively ascertained through *maqāṣid al-sharī`ah*. The concept of *maqāṣid al-sharī`ah*, or the higher objectives of Islamic law, plays a crucial role in guiding the interpretation and application of Shariah, aiming to preserve the fundamental aspects of human existence. These are succinctly identified as the protection of religion (*al-dīn*), life (*al-nafs*), intellect (*al-`aql*), lineage (*al-nasl*), and property (*al-māl*) (Al-Syāṭibī, 1341H; Ayu Nor Azilah Mohamad, Mohamed Ali Haniffa, & Wayu Nor Asikin Mohamad, 2018). This quintessential framework is foundational, ensuring that Islamic jurisprudence safeguards the sanctity and dignity of human life and societal order.

The scholars and jurists of Islam, while unified in the pursuit of these objectives, exhibit diverse methodologies in their interpretation and application. For instance, al-Ghazālī

emphasised the concept of *maṣlaḥah* as a guiding principle in understanding and applying the Shariah, not as a pursuit of benefits or the avoidance of harm per se, but as an endeavour to uphold the divine objectives of the law (al-Ghazālī, 1997). Similarly, Ibn ‘Ashur posited that the Shariah aims to secure human welfare both in the present life and for the future, though not necessarily in the hereafter, indicating a temporal scope of the concept of *maṣlaḥah* that is primarily worldly (Alfa Syahriar & Zahrotun Nafisah, 2020).

The application of *maqāṣid al-sharī`ah* extends beyond theoretical discussions, impacting legal judgements and societal regulations. Within the realm of *uṣūl al-fiqh* or Islamic legal theory, the concept of *maṣlaḥah* is considered paramount in devising legal rulings, necessitating an instrument like *maqāṣid al-sharī`ah* for its implementation (Alfa Syahriar & Zahrotun Nafisah, 2020). This approach is evident in various Islamic legal schools (*madzhab*). For example, in the Shāfi`ī school, the *maqāṣid al-sharī`ah*'s implementation hinges on the principles set by Imam Shāfi‘ī and furthered by his adherents in their legal deductions. Central to this is Shāfi`ī’s framework for prioritising benefits in legal decisions, expanded by al-Juwaini into three categories: *al-Ḍaruriyyah* (necessity), *al-Ḥajiyyah* (needs), and *Taḥsiniyyah* (embellishment). Al-Ghazālī underscored the importance of protecting the 'five essentials' (*al-ḍaruriyyah al-khamsah*), a concept supported by Izz al-Din Ibn Abd al-Salam, who asserted that Islamic rulings should foster welfare and prevent harm, aligning with the Shariah and favouring universal over exclusive benefits (Holilur Rohman, 2018). Meanwhile, the Hanafi school recognised the framework of *maqāṣid al-sharī`ah* in the principle of *istiḥsān*, and the Maliki school incorporated it in the concepts of *maṣlaḥah al-mursalah* (Alfa Syahriar & Zahrotun Nafisah, 2020) and *sadd al-zara’i’* (Burhan al-Din Ibn Farhun, 1995).

However, the application of *maqāṣid al-sharī`ah* is not without its complexities. Al-Ghazālī (1997) delineates specific limitations, stipulating that for the objectives of the Shariah to be validly pursued, they must comply with similar laws recognised by the Shariah, avoid contradiction with Shariah sources (al-Quran, al-sunnah, *ijmak* and *qiyas*), and belong to the category of primary needs. The Maliki and Hanbali schools add further nuance, requiring that the intended benefit be rationally discernible and possess a general, comprehensive impact rather than a private, partial orientation (Alfa Syahriar & Zahrotun Nafisah, 2020).

Reflecting on the *maqāṣid al-sharī`ah* principles outlined previously, one might question whether land acquisition aligns with these tenets. This contemplation evokes notable instances from Islamic tradition, such as Rasulullah’s action of acquiring land from orphans for the construction of the Medina Mosque, which underscored not only fairness but also a profound recognition of the land’s communal and spiritual significance (Muh. Fiqri Qadir & Rahmatiah, 2021).

From ethical and legal frameworks, land acquisition should always ensure fair compensation and align with public interest, safeguarding social harmony and justice (Baharuddin Lopa, 1996; Muh. Fiqri Qadir & Rahmatiah, 2021). Scholars such as al-Dasuqi al-Maliki and al-Bujairimi al-Syāfi`ī also elucidate the delicate balance between public welfare and individual rights, emphasising fairness and adequacy in governmental land acquisition endeavours (Sulaiman Ibn Muhammad, n.d.; al-Dasuqi, n.d.). Furthermore, the Hanbali school underscores governance’s pivotal role in facilitating land acquisition for essential public projects, ensuring the broader community’s welfare (Al-Mardhawi, n.d.). These insights collectively spotlight the critical and ethical considerations enveloping land acquisition,

reflecting its comprehensive societal impact.

Thus, land acquisition in Islam is permissible under the auspices of *maṣlaḥah*. *Maṣlaḥah*, which can be categorised into three levels of necessities: (1) "*ḍarūriyyāt*" (necessities), (2) "*ḥājiyyāt*" (needs), and (3) "*taḥsīniyyāt*" (embellishments) (al-Ghazālī, 1997). These levels are utilised to evaluate and prioritise the importance and urgency of needs or actions, and they are particularly influential in developing Islamic legal theories and ethical considerations.

When evaluating the permissibility of a particular action or law, Imam Ghazālī specifically stipulates that an action should only be implemented if it involves the *maṣlaḥah* of an essential (*ḍarūriyyāt*) nature, on the condition that it is a definite (*qaṭ'i*) *maṣlaḥah* and possesses a universal (*kulli*) character (al-Ghazālī, 1997). In situations where there is a conflict of actions at the same necessity level but with varied impacts (whether general or individual), scholars provide diverse viewpoints: The Ḥanafiyyah and Syāfi`iyyah prioritise individual rights over collective ones if the prospective harm is merely speculative (*ẓannī*). Conversely, jurists (*fuqahā'*) from the Mālikiyyah and Ḥanābilah schools accept speculative (*ẓannī*) harm if it pertains to the public interest. In this context, public rights are given precedence over individual rights, whether the ensuing harm is definite (*qaṭ'i*) or speculative (*ẓannī*) (Ali al-Khafif, 1966).

Therefore, based on the facts previously mentioned, we can draw the following conclusions about the embodiment of Islamic principles within the Land Acquisition Act of 1960, particularly in relation to *maqāṣid al-sharī`ah*:

Table 1: Comparative-Analysis of the Land Acquisition Act 1960 in the context of maqāṣid al-sharī`ah.

Criteria	Land Acquisition Act 1960	*Maqāṣid al-Sharī`ah*
Purpose	General: a. State's economic development; b. mining; c. housing; d. agriculture; e. trade; f. industry; g. recreational activities; or h. any segment of the public interest (Noor 'Ashikin Hamid, Noraida Harun, & Nazli Ismail, 2011; Menteri Besar Negeri Sembilan (Incorporated) v Pentadbir Tanah Daerah Seremban & Anor, 1995, p. 711).	To protect the *maṣlaḥah* of: a. religion (faith); b. life; c. intellect; d. lineage; and e. wealth.

Criteria	Land Acquisition Act 1960	*Maqāṣid al-Sharī`ah*
Impact	For the sake of public benefit or State's economic development.	Land acquisition is preferred when it benefits the public, not particular individuals.
Degree of certainty	Every degree of certainty regarding impacts is noteworthy.	Both the Ḥanafiyyah and Syāfi'iyyah schools assert that *maṣlaḥah* must be definitive (*qaṭ`ī*), whether it is to avert significant harm or to foster substantial benefits. Conversely, the Mālikiyyah and Ḥanābilah schools are open to speculative outcomes, provided they are in the public interest, and equivalent level of importance (Ali al-Khafif, 1966).
Compensation	Yes, compensation is given justly.	Yes, compensation is given justly.

Harmonization of Land Acquisition Act 1960 (Apt 1960) With *Taḥdīd al-Milkiyyah* and *Intizā' al-Milkiyyah* Principles

Referring to Table 1 above, it is necessary to align APT 1960 with Islamic principles within the framework of *maqāṣid al-sharī`ah*. Reconciliating human law with divine law is not a novel concept, yet it often ignites significant discussion. Nonetheless, finding common ground between these two sets of laws is feasible if legal experts from both domains are open-minded and share a unified vision. Maintaining a balance between the practical aspects of secular law and the spiritual nuance of Islamic jurisprudence is crucial to safeguarding the *maṣlaḥah* of the community.

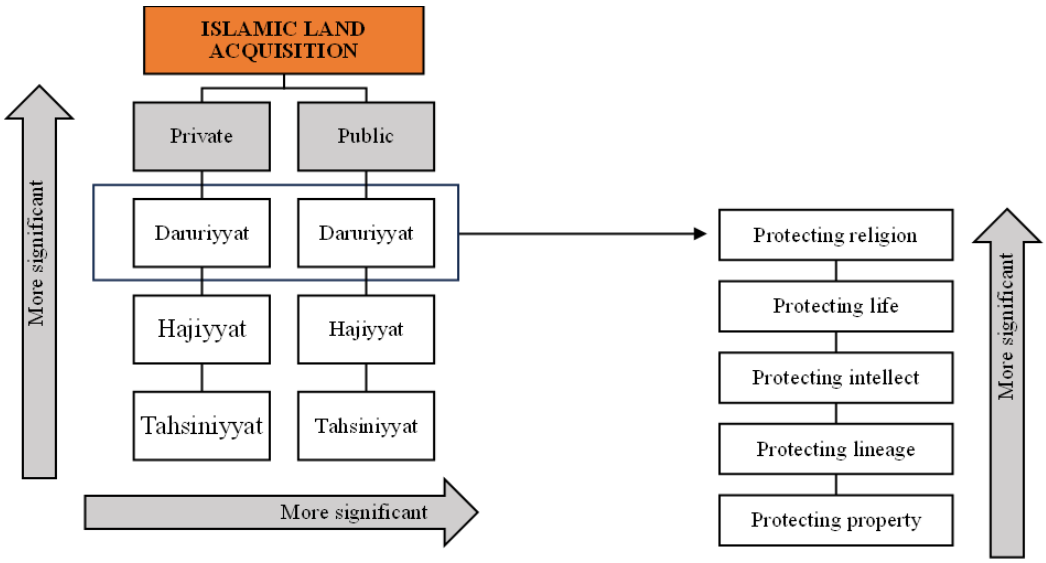
Table 1 above contrasts APT 1960 with Islamic land acquisition principles through a *maqāṣid al-sharī`ah* analysis. It reveals that the purpose behind land acquisition in Islam is to protect five essential human needs: religion, life, intellect, lineage, and property. In contrast, APT 1960 does not specifically target the safeguard of these human essentials in its land acquisition practices. Instead, land is acquired for various purposes, such as mining, housing, or agriculture, primarily for public benefits or economic development. For instance, the acquisition of land for building a football stadium may not have a direct connection with safeguarding the five essentials identified in *maqāṣid al-sharī`ah*. Nonetheless, this endeavour is undoubtedly undertaken for the public good, offering the community a recreational and commercial space that provides enjoyment. Under APT, such land acquisition is permissible when it serves the public benefit.

On the other hand, Islamic land acquisition assesses any acquisition of land from the standpoint of *maṣlaḥah*. Since the land is taken from an individual, the owner undoubtedly faces an economic impact. Compensation is provided to the landowner to offset this loss. Within *maqāṣid al-sharī`ah*, loss of property is considered an individual harm (*muḍarat al-khāṣṣah*). Defending the land from acquisition is viewed as an effort to protect private property (*maṣlaḥah*

al-khāṣṣah li ḥifẓ al-māl). For instance, if the state acquires land to build a hospital, this action can be interpreted as serving the public interest to preserve life (*maṣlaḥah al-`āmmah li ḥifẓ al-nafs*). In *maqāṣid al-sharī`ah*, when *maṣlaḥah al-`āmmah* and *maṣlaḥah al-khāṣṣah* are on the same level of necessity (both being *ḍaruriyyat*), the former takes precedence over the latter. Consequently, constructing a hospital is deemed far more critical and essential than maintaining an individual landowner's property rights.

In contrast to the land acquisition for the previously mentioned football stadium development, such an acquisition cannot be classified as an action to protect life, even though some might argue that sports contribute to a healthier life. Historical observations indicate that people maintained a healthy life without the existence of a stadium. While developing a stadium is significant, it is not as essential as protecting one's property. The acquisition of one's land for a stadium is considered a *ḥajiyyat*, as it serves primarily to promote societal health, thereby indirectly safeguarding life, rather than directly doing so. Therefore, within *maqāṣid al-sharī`ah*, the dilemma of acquiring land to build a stadium versus preserving an individual's land from acquisition is a matter of *ḥajiyyat* versus *ḍaruriyyat*, with the latter taking precedence over the former.

Figure 1: Conceptual framework of Islamic land acquisition according to maqāṣid al-Sharī`ah



The Land Acquisition Act of 1960 (APT 1960) not only allows the state to acquire land for public benefit but also allows land acquisition to bolster the state's economic trajectory. This dual purpose is vividly demonstrated in the case involving the acquisition of agricultural land from FELDA LBJ's settlers for the ENSTEK development, a project undertaken to catalyse the state's economic growth. Legal precedence, such as that set in Menteri Besar Negeri Sembilan (Incorporated) v Pentadbir Tanah Daerah Seremban & Anor, affirms the protection of land acquisitions specifically intended for business advancements and commercial. Once authorised, these acquisitions are irrevocable, underlining their significance and permanence (Menteri Besar Negeri Sembilan (Incorporated) v Pentadbir Tanah Daerah Seremban & Anor, 1995).

In the context of Islamic jurisprudence, land ownership is considered a *waẓīfah ijtimā`iyyah*, or social obligation. This perspective empowers the Islamic government or authority to impose limitations or restrictions on ownership rights (*taḥdīd al-milkiyyah*) (Ali al-Khafif, 1383H; M. Arsyad Kusyasy, 2003) and, if necessary, rescind them entirely (*intizā' al-milkiyyah*). This authority is derived from the foundational Islamic legal maxim that "the ruler's actions towards their peoples are based on *maṣlaḥah*" (*taṣarruf al-imām `alā ra'yatihi manūṭu bi al-maṣlaḥah*) necessitating that any land ownership limitations or withdrawal of ownership to be meticulously analysed through the lens of *maqāṣid al-sharī`ah*.

Given this framework, it becomes evident that the APT 1960's provisions for land acquisition serving economic development are aligned with the Islamic principles of *taḥdīd al-milkily* and *intizā' al-milkily*, especially when such acquisitions contribute to societal benefits in the form of poverty's alleviation. This alignment underscores the recognition of land acquisition for economic propulsion as 'public *maṣlaḥah* to protect life and property' (*maṣlaḥah al-`āmmah li ḥifẓ al-nafs wa al-māl*). Poverty can directly result in loss of life, and by fostering a robust economic environment that offers job opportunities, poverty can be alleviated, and unnecessary deaths can be averted. When considering this scenario, if the aspect of protecting life is not considered, the focus shifts to the secondary form of protection, namely safeguarding property. Resisting land acquisition from one's ownership shares the same level of *maṣlaḥah* as the state's action in acquiring land for economic projects. The primary difference is that the former pertains to individual *maṣlaḥah*, while the latter concerns the public. A legal maxim also asserts, "general benefit takes precedence over specific benefit". Hence, in this context, the acquisition of land is deemed more critical than preserving individual ownership rights.

In terms of certainty in benefits, APT 1960 does not explicitly demand certainty of benefits in land acquisition. This stance somewhat diverges from Islamic principles, which emphasise the necessity of such certainty. Specifically, the Ḥanafiyyah and Syāfi'iyyah schools of thought maintain that *maṣlaḥah* must be definitive (*qaṭ`ī*) not speculative, either to prevent significant detriment or to cultivate notable advantages. On the contrary, the Mālikiyyah and Ḥanābilah schools accommodate outcomes that are less certain, if they serve the public interest and retain a commensurate level of significance (Ali al-Khafif, 1966).

Regarding compensation, there is a convergence between APT 1960 and Islamic jurisprudence on land acquisition: both advocate for compensation to indemnify landowners for their losses. However, despite these areas of overlap, there are aspects of APT 1960 that require refinement to fully align with the Islamic concepts of *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah*. Currently, APT 1960 stipulates that the State Authority has the prerogative to acquire land for any public purpose (Section 3(1)(a), [Act 486]), whether by individuals or corporations, for anything deemed beneficial to Malaysia's economic development (Section 3(1)(b), [Act 486]), and can encompass a myriad of activities, including but not limited to mining, residential, commercial, industrial, or recreational pursuits, or any combination thereof (Section 3(1)(c), [Act 486]).

To enhance coherence with *maqāṣid al-sharī`ah*, this work proposes a revision of the terminology 'for any sake of public' used in Section 3(1)(a) of APT 1960. This term should be explicitly defined in line with *maqāṣid al-sharī`ah*, potentially within Section 2 of APT 1960 (definitions) or another appropriate section of the statute. The revised clause should articulate

that the State Authority's objective in acquiring land is to safeguard the faith, life, intellect, lineage, and property of Malaysia and its society, whether in part or whole.

Furthermore, the responsibility of ensuring that such land acquisitions are congruent with the maqāṣid *al-sharī`ah* should be entrusted to the State Economic Planner Unit or a similarly purposed committee, as outlined in section 3A of APT 1960.

Another suggestion should be made is regarding the certainty of benefits, which is currently absent in APT 1960. Law makers should include a requirement that the certainty of benefit ought to be a critical criterion in the authorisation of any land acquisition. This addition would be suitably placed in Section 3A (1) of APT 1960, assigning responsibility to the State Economic Planning Unit or equivalent committee. Given that land acquisitions are sanctioned for public interest, it is important to establish parameters to determine whether the anticipated benefits are definite or speculative.

Should the lawmakers desire for APT 1960 to adopt a more lenient approach and aim to reduce bureaucratic red tape, they might consider drawing upon the opinions of the Mālikiyyah and Ḥanābilah schools, which are more accommodating of speculative benefits, provided these are in the public interest (Ali al-Khafif, 1966). Conversely, if a stricter approach is preferred for APT 1960, the opinions of the Ḥanafiyyah and Syāfi'iyyah schools, which advocate for a higher degree of certainty in benefits, should be referred (Ali al-Khafif, 1966).

Conclusion

The Land Acquisition Act of 1960 (APT 1960 or Act 486), established in alignment with the Constitution, regulates the state's authority to acquire land lawfully for public interest or economic development, ensuring fair compensation for landowners. While the act is pivotal for societal progress and economic growth, it raises concerns about the impact on local communities and cultural sustainability, especially in transformative projects like those in FELDA territories.

Integrating fiqh (Islamic jurisprudence), land is viewed as a divine trust, balancing societal welfare with individual rights through principles of *taḥdīd al-milkiyyah* (limitation of ownership) and *intizā' al-milkiyyah* (ownership divestiture), aiming for the greater public interest (*maṣlaḥah*).

The act aligns with these Islamic principles, particularly when land acquisitions serve societal benefits. However, it diverges on the objectives of land acquisition and the necessity for certainty of benefits, a key consideration in Islamic law. Both APT 1960 and Islamic principles agree on compensating landowners justly.

Revisions are suggested for the act to enhance its congruence with Islamic jurisprudence, including clearer definitions of 'public benefit' aligned with the objectives of the Shariah (*maqāṣid al-sharī`ah*) and the introduction of criteria ensuring the certainty of benefits from land acquisitions.

In conclusion, the Land Acquisition Act of 1960 is important for Malaysia's development but could achieve greater equity and balance by integrating *taḥdīd al-milkiyyah* and *intizā' al-milkiyyah* principles from Islamic jurisprudence, ensuring it serves not just economic objectives but also respects the socio-cultural essence of the community. Future research should analyse the real-world impacts of proposed legal changes on societal welfare

and land ownership, drawing on perspectives from multiple disciplines for a well-rounded analysis. Additionally, studies should explore and delve into the applicability of these findings in contexts with similar cultural and legal backgrounds, identifying universal challenges and best practices.

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