

Formulating Islamic Jurisprudence Framework for Stratified Properties Management

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Abstract: This paper prepares a basis for formulating a coherent and systematic jurisprudence of stratified properties management from an Islamic perspective. It promotes that stratified building management which allows for self management among the property owners forms a basis for positive relationship thus promoting the concept of *Hablum Minallah* (relationship with Allah) and *Hablum Minannas* (relationship among the fellow human being), sustainability, ecological awareness as well as accountability to the Creator (Allah). This paper employs a doctrinal analysis where the verses from the Quran and the compilation of the authentic *hadith* are used as a basis for developing a framework towards producing comprehensive jurisprudential guidelines for stratified properties management. The findings show that there is dearth of guideline from the primary sources on property management. Nevertheless, Islam laid down various general principles to form a guideline on how a Muslim manages his matters privately and with the public. The details are left to be determined via various methods of jurisprudential and legal analysis. This paper proposes that human being's roles in stratified properties management should be regulated based on Islamic jurisprudence perspective where understanding of the objectives [*maqasid*] of the Shari'ah is of primary concern.

Key words: Stratified properties management • Strata titles • Land • Islamic jurisprudence • *Maqasid Shariah* • Ecology and sustainability

INTRODUCTION

It was once questioned by a non-Muslim examiner on a thesis relating to legal framework of strata or stratified properties on the need to discuss the Islamic aspect of strata management in any work on stratified properties management. The ignorance is not uncommon. The misconception about the separation of the worldly matters and the rituals is also common among the Muslim. As a result, the principle that Islam is *ad deen* and covers all aspects of human life is seldom put into practice. Although there is a valid argument that the principles of strata properties management should be seen as part of general management discussion, nevertheless, in this paper, it is argued that it differs in many aspects including the intention although it may not be so in performance. Islam concerns with one's intention whether his act is for his own good or it is part of his submission to his God (*ibadah*), the Creator. The significance of doing things as part of *ibadah* is manifested in various other actions such as honesty, sacrifice, priority, modesty, moderate in doing

and no self-interest should take priority in any of man's doings. The teachings cover directly or indirectly, every possible human relationship including that related to building and land management. These teachings are primarily available in the revelation which comprises the Qur'an and the sayings of the Prophet (pbuh). There are also secondary sources known as *Ijma'* (consensus of jurists) and *Qiyas* (deductive analogy). The details of the principles and their application are normally discussed in books of Islamic jurisprudence or *Usul al-Fiqh*.

Theological Framework: In Islam, one of the important teachings is the Prophet Muhammad (pbuh) was sent to give guidance to the *ummah* [1]. The Qur'an was revealed as a book of guidance [2]. Moreover, Allah swt emphasizes that the Qur'an provides the foundations for knowledge and ethics. Allah swt says "...Nothing have We omitted from the Book..." [3]. Allah swt also declares that Islam, as a Din (a way of life) has been perfected by Allah swt. The Islamic world-view is established upon the very notion of Islam as a perfect religion: Allah says

"...This day have I perfected your religion for you, completed My favor upon you and have chosen for you Islam as your religion" [4].

Having mentioned the authorities, it shows that Allah swt has prepared almost a complete guideline for the human being to traverse their journey in this world. That includes the corpus of jurisprudence of management which can be designed and implemented in strata properties management. This paper aims to present various important aspects of management with special focus on strata building management from the Islamic world-view.

Defining Strata Properties: Strata properties refers to ownership of part of building or land where the titles to evidence the ownership are issued separately to give individual security to each registered owner and there are common areas and facilities that are commonly owned, managed and enjoyed by all strata owners [5]. The properties may include units of houses and land, apartments or offices jointly developed within a development. The strata properties are managed by a body consisting of all the owners, which is known as the management corporation (MC) and in some cases, include the manager or the developers.[6] The owners are required to elect in an annual general meeting (AGM) among themselves a group of people to be the committee who have power to manage and maintain the property according to the Act as well the by-laws that have been unanimously agreed by them. The laws in many strata jurisdiction allow for the bodies to sue and be sued.

The Relationship Between Jurisprudence and Stratified Building Management: Topic of 'management' is always perceived as a western term and is thus interpreted and applied based on western world-view. *Fiqh*, on the other hand, is an accepted and perceived as the foundation which determines the lawful and the prohibited in human behavior. Therefore, *fiqh* is more influential and potential of modifying human behavior positively. In this paper it wishes to show that 'management' is not a borrowed western term and ideology but a common principle, which is rightly emphasized in Islam and is applicable to all. Nevertheless, the basis for management in Islam is the faith i.e. the belief that managing oneself and others is an act of faith and rewarding. As such, Islam governs matters on managing human being and his subject matters including the earth and its contents, the sky and its universe as well as the environment.

Man as Vicegerent of Allah in the Earth: Man is created and selected to become a vicegerent of Allah swt. This concept of vicegerency is declared before the creation of the first human being who was earlier doubted by the Angels but Allah swt affirms by saying that "I know what you know not"[5]. As a vicegerent, human being is perceived as the trustee of Allah who is given the responsibility to manage the earth subject to the guidelines as provided in the Quran and further explained through the Prophets. Man is not supposed to cause corruption or damage (*dharar*) in any form whatsoever on earth. Man responsibility is a test with accountability. Allah also makes clear of the consequences i.e. either reward or punishment. Allah swt. says "It is He who has made you (His) vicegerents, inheritors of the earth: He has raised you in ranks, some above others: that He may try you in the gifts He has given you: for your Lord is quick in punishment: yet He is indeed Oft-forgiving, Most Merciful." [6]. Man is reminded that they are always under the observation of Allah swt. "Then We made you heirs in the land after them, to see how you would behave!" [7]. "...Call in remembrance that He made you inheritors after the people of Noah..." [8]. "And remember how He made you inheritors after the 'Ad people and gave you habitation in the land..." [9].

Islam perceives there is connection between proper knowledge and right behavior which form as two important components for management. Indeed, knowledge is a tool that forms a foundation for any moral and ethical duties, which is essential in management. Therefore, vicegerency is based upon knowledge that enables human being to be a caretaker of all worldly matters. Humanity should be translated in such a way that would maintain the balance the worldly matters and the Hereafter. "And the earth We have spread out; set thereon mountains firm and immovable; and produced therein all kinds of things in due balance" [10].

Duties for Protection and Preservation: In strata management, the lifespan of the property, peaceful living as well as the value of the property depend on the commitment of the caretakers i.e. the owners. Since, most strata laws in the world allow for self-regulation of the property by the owners', it is a great responsibility to ensure that whoever is selected as the member of the management body to strive to hold the trust (*amanah*). The Qur'an makes it clear that the earth is the place for habitat and human being is required to dwell on it [11]

protect the environment and establish a balanced way of life without sacrificing the right of other God creation. The concept of *I'mar* can be related to settling all over the earth, inhabiting every livable quarters, building and thus includes the duties to maintain and manage those properties so that it is safe, liveable, sustainable and enjoyable. Thus, the concept of *I'mar* includes every positive activity that would make life on earth prosperous. If any activity diverts humanity from the right path (i.e. against the Shari'ah) thus it cannot be considered as *I'mar*. The relationship between creation and the positive role expected from humanity is explained in the Quran as "To the Thamud People (We sent) Salih, one of their own brethren. He said: "O my People! Worship God: you have no other God but Him. It is He Who has produced you from the earth and settled you therein: then ask forgiveness of Him and turn to Him (in repentance): for my Lord is (always) near, ready to answer" [12]. The Qur'an shows that any attempt to achieve *I'mar* and prosperity away from divine revelation and guidance will lead to destruction. Allah swt says, "Do they not travel through the earth; and see what was the End of those before them? In strength they tilled the soil and populated it in greater numbers than these have done: there came to them their apostles with Clear (Signs), (which they rejected, to their own destruction): it was not God who wronged them, but they wronged their own souls." [13].

Duty to Promote Sustainable Living for mankind is an Act of Faith: A correct understanding on the concept of worshipping (*ibadah*) in Islam is crucial to reflect that every act of the Muslim that falls within the prescribed teaching of Islam. Islam prescribes that everything that a Muslim does must be for the sake of Allah swt. By that, it is essential to ensure that the act conforms to Shariah requirement, which qualifies for good intention, beneficial act for the doer as well as others around him directly or indirectly. Thus, Islam makes clear that the main purpose of creation of human being on earth is to worship Allah [s.w.t.]: "I have only created Jinn and men, that they may serve Me." [14] As Islam is a way of life thus act of faith is not confined only to performing religious duties. Instead, it includes any action that the human being performs in accordance with the Islamic world-view amount to *i'badah*. In managing and maintaining a building, for instance, ensuring a building is safe and the act is done for the sake of Allah swt. Thus it is considered

an act of worshipping that generates reward in this life and the hereafter. An example is advocating for sustainable living in multi-storey building owned by various owners and managing dispute, if any is surely an act that is rewarding.

Islam advocates for peaceful life, safe living which includes the protection of the environment and all other properties in the earth. For example, Islam has high regard for the environment and there are clear authorities in the Qur'an and the Sunnah indicating for the duties to sustain the bounties of Allah swt. The fact that Islam requires the mankind to protect the environment and to use natural resources in the manner for the benefit of the mankind is considered an act of worshiping does not indicate that every component of the environment should be saved. In fact, it is sometimes to the contrary.

Translating Islamic Jurisprudence in Stratified Property Management: In strata living, harmonious living, peace, privacy, neighbor's rights and duties as well as cleanliness are among the crucial part of community living. Most strata jurisdictions in the world promote self-governance or self-regulation for stratified properties. It involves individual as well as the committee members of either the Joint Management Body or the Management Corporation consists of the owners of the parcel unit to plan, manage and maintain cleanliness of their residence and the whole part of the common property. It leads to the duty to ensure that the Management Corporation will have sufficient fund to sustain the cleanliness. The whole objectives fail if one single individual fails to perform his financial commitment for the maintenance.

Similarly, the JMB or the MC has a great task to ensure the agenda for maintenance and management is fulfilled. They are appointed through a meeting thus their appointments are based on trust and honesty.[15] Islam forbids any act that disregards any attempt which brings good for the whole human community. Thus, disregard any rules that move for protection of environment is sinful and those who practically worship the environment or certain parts of it. While the Islamic worldview supports the protection of environment from the greedy behavior of human beings, it allows room for sustainable development. As a result, any act of destruction the earth and anything that forms the earth shall be considered as destroying these signs of Allah's presence. In fact, it is everyone's duty to ensure that future generations will live in a clean, safe and healthy environment.

The Jurisprudence of Divine Punishment and Human Wrong Doings:

The teachings of the Qur'an reflect the correlation between wrongdoing and divine punishment which lead to a certain measure of destruction [15]. Allah swt explains the correlation of wrong doings and divine punishment. There is also a direct relationship between wrongdoing and calamities: "Whatever misfortune happens to you, is because of the things your hands have wrought and for many he grants forgiveness." [16]; "Mischief has appeared on the land and sea because of (the need) that the hands of people have earned, that (God) may give them a taste of some of their deeds: in order that they may turn back (from Evil)." [17] In most situations, the God-conscious occupant or manager is important. Law alone is nothing but externally imposed mechanism but internally injected motivation and awareness is crucial to ensure there is no breach of trust, graffiti, irresponsible use of lift or other common properties in strata living. A manager will not misuse his authority not only for legal punishment but because he fears his Creator, who is ever seeing and witnessing.

Important Principles in Strata Properties Management

1 Human Beings: As the Owner, Manager and Trustee of

God Creation: The objectives of Shariah (*maqasid shari'ah*) specifically provide for the protection of five things pertaining to humans: life, religion, offspring, intellect and property. The five objectives of Shariah ranks according to its priority provide a basis for determining priority in any policy and justification. The essential limits that should not be transgressed are explained by Saydina Abu Bakr to Yazid Ibn Abu Sufian, the commander of the army that went north to Sham [i.e. Greater Syria]: "...And I instruct you [to fulfill the following] ten [orders]: Do not kill a woman, nor a child, nor an old man; do not cut down fruitful trees; do not destroy [land or housing] in use; do not kill a goat or a camel unless for food; do not flood palm trees [with water] nor burn them down ..." [18]. The above reflects the objectives of Shari'ah, defines the norm that the life of those who do not engage themselves directly in war should be spared. Protection is also extended to animals and plants; they should not be used as part of collective punishment. Allah says: "O ye who believe! Stand out firmly for God, as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from Justice. Be just: that is next to piety: and fear God. For God is well-acquainted with all that ye do." [19].

Handling Disputes in Strata Management: Strata living is sometimes like a living in a very big family where people sharing not only the physical facilities but also the burden and commitment of maintaining the buildings. It is sometimes lead to a very individualistic life where everybody can just confine his life to his parcel alone. Unless and until there is an issue affecting his life, one may continue with his life unnoticed by others. Having acknowledged the need of privacy and quite life of all human being, Islam also gives special emphasis on need to care for neighbours. Caring means ensuring that your neighbour's privacy is not disturbed but Islam also balances the neighbour's rights for assistance care and become a friend in need. All the rights are sometimes not directly mentioned but translated from the various duties of Muslim towards his religion and his fellow brothers. A Muslim has to pay zakat and is highly encouraged to perform his prayers in congregation. In fact, the obligation of *Jumaah* prayers in the mosque for the men manifests a strong message of unity and brotherhood. The same spirit is expected to be applied and upheld by any Muslim towards his Muslim and non-Muslim brothers.

Living in big community always bound for differences. In dealing with differences and disputes Islam promotes consultation or *Shura* among the members. The opportunity to practice *Shura* in strata management is rampant. If disputes are unavoidable Islam advises the parties to appoint *Hakam* or conciliator or mediator. If strata legal framework lacks legal sanction, the parties may bind themselves through agreement or contract. In stratified properties management, the owners' corporation or Management Corporation may mutually agree to have a special clause or by-law to provide for resolving dispute through mediators appointed among the respected members among themselves.

Islam promotes equality and equity. Human being stands equal unless those who are most pious in they eyes of Allah. Allah swt does not permit any ideas of negative value judgment regarding the biological differences in terms of color and shape. The only legitimate differentiation in Islam is based upon moral, not physical character: "O mankind! We created you from a single (pair) of a male and female and made you into nations and tribes, that ye may know each other (Not that ye may despise each other). Verily the most honored of you in the sight of God is (he who is) the most righteous of you. And God has full knowledge and is well acquainted (with all things)."[20] Tolerance is also emphasized in the Islam [21].

Protection of Land and Stratified Properties from Destruction: Islam protects all God creations by prohibiting any harmful acts in many ways. For example, Allah says: "...And make not your own hands contribute to (your) destruction; but do good; for God loveth those who do good." [22] Thus, right from the process of development of the buildings, all parties are obliged to set the best and the safest structure for human abode. The responsibility to ensure the safety of the buildings lies in the Management Corporation or Managing Agent whom are entrusted to conduct monthly check, prepare annual depreciation report as well engaging professional company who are committed to their jobs.

Islam forbids any act of destruction. One Hadith states, among other things, that God likes goodness, cleanliness and generosity. [23] The *hadith* ends with a request by the Prophet (pbuh) asking Muslims to clean their courtyards. The *hadith* shows that cleanliness is something desirable, good and reflects an act of generosity towards the environment. Indeed, if cleanliness is something good, then it should be reflected everywhere. Islam has created a bond between faith and cleanliness, rendering the latter as a part of creed. The Prophet (pbuh) said: "Faith has seventy branches, the highest of which is "There is no god but God and the least is removing obstacles from the path of people and that shyness is a branch of faith." It is obvious that clearing the path means, in this context, the removal of material obstacles or solid waste which constitutes a kind of pollution. Abu Hurayrah reported that the Prophet (pbuh) said: "Beware of the two [acts that bring] curses: relieving oneself in the path of people or in the shade [i.e. where they usually rest. The same concept is reiterated in another *hadith* which, in addition to the above two prohibitions, it mentions the prohibition of relieving oneself in water sources (e.g. ponds, rivers ...etc.) [24]

Managing Water and Other Outgoings: Living in strata does not mean that one shares the water supply but some schemes still require so. Nowadays, a separate meter is installed so that each owner will be individually measured of his water usage. Even so, water is the most valuable natural resources. It is God's will that all living beings on earth are dependent for their existence on water: "...We made from water every living thing..." [25]. Furthermore, there are tens of verses in the Qur'an that reflect the direct involvement of the Divine Will whenever it rains. Allah swt says: "And God sends down rain from the skies and gives therewith life to the earth..." [26]. "...and He sends

down rain from the sky and with it gives life to earth..." (Qur'an, 30:24). "And We send down from the sky rain charged with blessing and We produce therewith gardens and grain for harvests." [27]

In addition to the protection of water from pollution, the Sunnah emphasized the proper use of water without wasting it. One more Hadith regarding the protection of water is related to the use of clean still water. The Prophet saw said: "No one should bathe in still water, when he is *junub*".[28]

Human Management Issues and Neighborhood Principles

Sharing Rights and Duties: Muslims are brothers. Islam also emphasizes that the purpose of the creation is to know one another. Life in stratified properties where most of the common facilities are shared calls for a better understanding, tolerant and cooperation from all occupants Muslim and non-Muslim.

Leadership and Consultation: As Malaysia adopts self regulated strata management, it promotes leadership and self governance. It is healthy and transparent but needs monitoring system based on trust and professionalism. Thus, strata leadership requires legislative and administrative guidelines supported by the government.

CONCLUSION

Islam is a comprehensive religion. It provides guidelines for stratified property living and management with clear authorities on how to deal with neighbours, rights and liabilities in common properties, leadership and consultation and human resource management based on *tawhidic* approach and *maqasid of shariah*. The universal concept of Islam covers all human being, Muslim and non Muslim. The embodiment of divine guidance will produce attribute of godliness (*rabbani*) which is crucial in Islamic management. The current Strata Management Act 2013 provides a basic foundation for the management of stratified properties which are in line with Islam.

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