



OWNERSHIP AND ACCESS ON BEACH: A CASE STUDY ON AVANI SEPANG GOLD COAST, SELANGOR, MALAYSIA

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Abstract:

Private beach is a global practice in enhancing tourism industry activity but relatively new concept in Malaysia. While tourism is under responsibility of the federal government, utilization and use of land belong to state authority's power and control pursuant to Federal Constitution 1957. This including land consist of beach pursuant to National Land Code 1965. However, Malaysia is yet to have specific statutory governance on beach or coastal. This paper focuses on State of Selangor government practice in land administration regarding practice of private ownership existence on beach. It will discuss on the government's reason, present administration and management for the practice and uptake on public access to private owned beach. A qualitative methodology has been adopted by using case study strategy on AVANI Sepang Gold Coast (SGC), Bagan Lalang, Sepang, Selangor. Data has gathered through document analysis and semi-structured interviews on purposive key informants including local authority and state agency representatives. It was found that the practice of 'private beach' in Selangor exist through state land alienation and transfer process to 'joint venture' entity which include state agency for 'eco-tourism' redevelopment in Bagan Lalang's coastal area which comprises of soil land, beach land and water. This practice was found in line with State of Selangor government guideline on 'Pekeliling Pengarah Tanah Dan Galian Selangor Bilangan 14/2010: Panduan Pemberimilikan Tanah Dasar Laut Bagi Tujuan Pembangunan Di Atas Dasar Air Di Negeri Selangor.' Further findings were explained in SWOT (Strength, Weakness, Opportunity, and Threat) analysis. To conclude, key informants agree this complex issue requires intense caution when considering the implications, models, and administrative processes associated for beach redevelopment and sustainable.

Keywords:

Tourism, Beach, Development, Ownership, Sustainable, Access

Introduction

The evolution of beach development from traditional use to the needs of global tourism has resulted in the effects of its land use, beach recreation and activities, and the expansion of development in its surrounding areas as well as economic sector. History in Malaysia, for instance, is landscaped within a coastal context rather than the beach. Several governments and ancient civilizations such as the Nile, Mesopotamia, the Indus, the Malay Kingdom of Srivijaya, and Malacca flourished in the coastal area. The flourish is due to the position of sea trade and the economic resources of the local community in ancient times, who considered the sea as the most strategic location for daily life (Loganathan & Said, 2004). The coastal area is crucial in the process of generating the country's economy for centuries. For example, history has proven the Malay-Malacca and Johore-Riau become a powerful force due to their position on the shore that can shape the economy at the time. Table 1 explain in brief comparisons between coast and beach.

Table 1: Comparisons Between Coast and Beach.

Comparisons	Coast	Beach
Definition	The coast is the place where land meets the sea.	Beach is the part of land along the shoreline of sea.
Characteristic of formation	Waves, tides, and currents jointly cause the formation of a coast. Coast includes caves, cliffs, beaches, and mudflats.	A beach is resulted from wave action. A beach consists of sandy and/or rocky beaches. It is a narrow, gently sloping strip of land that lies along the edge of sea.
Access by people	Coast which did not have beach does not provide any access.	A beach provide access for people to view and enjoy.
Example	Delta coast, sheltered and pelagic coast.	Sandy beach, seashell beach, volcanic beach and coral beach.

Source: Adopted from the researcher.

In terms of public beach use, all three areas of wet sand, dry sand, and upland must be considered for the purposes of access in planning (Brower & Dreyfoos, 1979). While eminent domain, custom, and implicit dedication are all useful in obtaining public access across and upon private shore property, none of them will be long-term solutions. In international application, the Public Trust Doctrine could solve the public access problem in the long run (Welby, 1986). In Malaysia at present, most of the existing legislation for matters related to biodiversity, conservation, and management are specific in sector based. For instance, the Protection of Wildlife Act 1972 deals specifically with wildlife protection. The Fisheries Act 1985 deals with the conservation and management of fisheries resources, while the National

Forestry Act 1982 deals with the utilization and management of forests. Malaysia is yet to own a specific legislation on beach or coastal.

Beaches are an important commodity in the tourism industry, which helps to the country's economic development. From a psychological standpoint, the inherent character of the beach can decrease stress and provide the advantages of meditation to those who are on or near the beach (Pasanen et al., 2019). Aside from changes in the economic and social landscape of uses, the use of beach land through development has resulted in changes in government practise, such as the exploration of joint ventures between the government and the private sector for land development through alienation. As a result of this practise, private ownership, private development, and private beaches have emerged. Like a successful management practise, the success of this type of venture now serves as a model for other countries (Ávila-garcía & Sánchez, 2015).

Problem Statement

The issues of public and private management on the beach have also been discovered to revolve around recreational operation and function on the beach in a reactive manner (Sarda et al., 2015). In the local context, several studies related to coastal discipline have found the existence of private beaches as part of their research result findings (Abdullah, 1999; Dada et al., 2012; Nair et al., 2016; Payus & Nandini, 2014). However, no specific studies on this issue being undertaken out to understand this nature in the local context.

Presently in local scenario, the beaches have not been spared from changes in many forms due to the pressure of development and sparks challenges in forms for beach management. Development has changed the beaches landscape to be in accordance with the needs of the property market (Buang, 2006) and current recreational tourism demand such as eco-tourism (Perumal et al., 2016). As a result, active zoning has taken place in this dynamical land use from agriculture to development or business. Rights to the beach including public access has accessorized to be deteriorated with the changes of land use consequences. Such action resulted in fear for the loss of public beach by its user but additionally a deprivation of their very important social pleasantness that they had been enjoyed (Buang, 2005).

Beaches in Bagan Lalang, Sepang Selangor are overrun by private development plans that have been inspired by State and Local Government development agendas. The principal development activities in this area are ecological mangroves and spa resorts and public beach development for tourism and leisure-related activities. The development of Sepang Gold Coast as Malaysian premier international tourism destination is that the responsibility of Sepang Gold Coast (SGC) Sdn. Bhd., underneath the jurisdiction of Sepang Municipal Council (SMC).

Pursuant to this, State of Selangor has issued '*Pekeliling Pengarah Tanah Dan Galian Selangor Bilangan 14/2010: Panduan Pemberimilikan Tanah Dasar Laut Bagi Tujuan Pembangunan Di Atas Dasar Air Di Negeri Selangor*' to accommodate the required development in Bagan Lalang, Sepang. As such, AVANI SGC, a private-owned and operated with international inspired beach resort concept existed. The existence of such beach resort concept has caused the beach in the area to become fragmented into private and public beach. Thus, the existence of private beach natures in this area renders rational of the study for a

valid local exploration of the global dilemma with main risk associated which is the implication of public access to the beach.

Literature Review

The beach area is not only an asset for development, but it is also an asset in its natural state. According to Constanza et al. (2006), beaches serve as an ecological system that provides various services to society, such as erosion and flood protection, biological control, and the provision of recreational and cultural values. Thus, non-strategic or ineffective land management on beaches may result sustainable issue in the depletion of the land.

According to theoretical perspectives, in some cases, public resources must be limited for protection. Garrett Hardin's classic 1968 Tragedy of the Commons (Oakes, 2012) explained how resources, whether publicly or privately owned, deplete. In terms of economics, the Hardin government uses a variety of methods to either provide public goods or avoid the tragedy of the commons by granting property rights. The transfer of property rights marks the transition from common to private ownership.

The neo-liberal economic policy for development implies "privatization" of public space as state-public spaces that physically enclosed, and access rights are then determined by new private, non-state actors (Keul, 2015). While beaches are now more legally inclusive, Keul claims that the findings of this study show that the ruling has had little impact on the practice of social exclusion from the beach. Postmodern urbanism considers the fact that the government is not the only entity in charge or control of public space, but that private companies with financial capital are buying up public space, altering its characteristics, uses, and ability to be used by people (Subramoney, 2015).

The relationship between neo-liberalism and post-modernism is stated in Ávila-garcía & Sánchez (2015):

"The neoliberal wave generated an increase in social resistance and alternative movements led by civil society in its various collective and national expressions that influenced the notions of democracy and citizen participation in the framework of postmodern society. All these reflected in a new modality of capitalist imperialism in its neoliberal phase known as accumulation by dispossession".

Beaches also provides intangible benefits such as rights in addition to physical benefits. Land law defines rights as the right to use, alienate, or exclude others from the land. Rights are usually concerned with ownership and tenure, whereas restrictions are usually concerned with land use and activities (Williamson et al., 2010). These rights should apply to beaches as part of the land in Section 5 of the National Land Code 1965 (state land includes the "foreshore").

The term "use of land" can be found in Section 18 of the Town and Country Planning Act (TCP) 1972, which states that the use of any land or building is only permitted if it is in accordance with the local plan. Before any proposed development can be approved, the land's status must be changed to reflect the new land use. Section 76 of the National Land Code of 1965 allows for the disposal of beach land where the section requires foreshore land to be disposed of over the course of a 99-year lease. In this light, state authority is given power to dispose of such state land as signified under Section 42 of the Code.

Certain categories, classifications, conditions, and restrictions on interest as vested in the land title may apply to any land possession. The expanded rights attached to a property were previously demonstrated in the case of *Adong Bin Kuwau & Ors vs Kerajaan Negeri Johor & Anor (1997)*, where the court stated that property may reasonably be construed to include obligation rights and other intangible and physical things, and thus the word "property" means not only the thing but also the rights in the physical and corporeal world. It is widely accepted that property includes the right of acquisition, the right of dominion, and the right of possession.

Right to exclude on a private owned beach is a challenge in tourism sector in sustaining beach to be accessed by the public. In the growing body of literature, study on public access to the beach heavily associated with Public Trust Doctrine being the legal doctrine that established and entrenched in the constitution of many countries. The doctrine is nearly universally accepted in the United States of America that stated shorelands and other parts such as the bottomlands, tidelands, tidewaters, navigable freshwater, as well as the plant and animal life that are living in these waters, are cordially owned by the public but held in trust by the state or government for the benefit of the public (Summerlin, 1996; Welby, 1986). This doctrine provides public access to the beach by way of lateral access, which is right to cross over the land and perpendicular access. Lateral access includes public enjoyment on the beach, such as sea-bathing and recreational activities. Lack of perpendicular access has created an uncommon situation of having beaches that are open to the public but with no means to be reached due to increased private ownership of coastal land (Summerlin, 1996).

In local context, although land proprietor enjoys the right to exclude on his land the National Land Code provides means for the public to have access to register the land. Under Section 388 of the Code, a Land Administrator's Right of Way or LAROW is a right that is created under Part Twenty-eight of the Code. This type of right is explained in the case of *Lye Thean Soo v Syarikat Warsaw (1990)*, whereby the court held that the State Authority has the power to create either private or public right of way based on circumstances needed. The creation of LAROW is to enable a land that is owned by someone to be used by someone else. The Land Administrator may create a Public Right of Way if the Land Administrator is in the opinion that it is necessary to create such right. A Public Right of Way shall give authorization for the public to pass and re-pass between any specified area of land. Whereas in private right of the way, such right could not be made simply for comfort and can only be approved if the needs are important such illustrated in the case of *Si Rusa Inn Sdn Bhd & LL v. Port Dickson Land Revenue Collector & LL (1987)*.

Objective and Methodology

This paper will focus its discussion on prime objective of the research which is explaining State of Selangor government practice in land administration regarding practice of private ownership existence on beach. The outcomes were discussed on the reason, present government's administration in practice of private ownership on beach as well as uptake on public access to beach.

Qualitative methodology was found to be used by other researcher in understanding beach management issues (Neal, 2016; Subramoney, 2015) and employed through case study strategy (Yin, 2018) in understanding this phenomenon. Under this objective, document such as land title, Sepang Local Plan 2015, 2025, and Environmental Assessment Impact (EIA)

and other related government official document has been examined to provide credibility to the findings. Semi-structured in-depth interviews technique was used towards non-probability and purposive sample of key informants comprises of local authority and state agency to gain information and insight. Prior to that, a pilot study or pre-investigation study was carried out in early stage of research. The 'pilot studies' refers to minor versions of a full-scale study of the research, which important to assess 'feasibility' studies, as well as pre-testing of a particular research instrument such as a questionnaire or interview question (Teijlingen van E & Hundley V, 2002) before full-scale research proceeded.

Case of Study

A reference to the Sepang Local Plan 2015 has been made, which catalyzes the original idea of private beach development exploration in local context followed by a site visit to the Sepang Land Office and District to verify such intended development. A simple interview with the officer and document analysis were being conducted at the time. At this stage, the land title is the most important document to examine to establish two key elements relevant to this research, which are:

1. The land title is registered by a private entity.
2. A beach area is included in the title plan.

Field work conducted in Sepang Land Office revealed that both essential components merit Sepang Gold Coast beach development project in Bagan Lalang, Sepang Selangor known as AVANI Sepang Gold Coast, as the only beach land area that has been transferred from a state agency to a private developer.

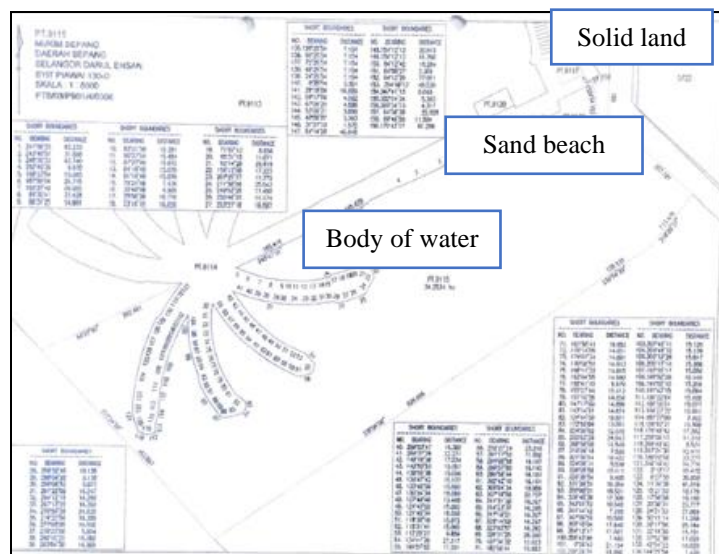


Figure 1: AVANI Sepang Gold-Coast Title Plan.

The type of land is depicted in Figure 1, which includes the entire plot of land, the solid land, sand beach, and the body of water. The transfer of an entire plot of land to a private entity established the existence of private beaches or private beach ownership in a local context.

A tourism project was initially proposed and carried out on State Government land in Bagan Lalang, Mukim Sepang, Daerah Sepang, Selangor Darul Ehsan, a 22-kilometer-long stretch of beachfront land from Sg. Sepang Besar. The total acreage of the project site under

consideration is 492.170 acres (199.174 ha), which can be divided into eight plots of land in year 2004, namely Plots 63, 64, 65, 66, 67, 68, 68A, and 69. The primary development activities to be undertaken are the establishment of an ecological mangrove and spa resort, as well as the development of a public beach, i.e. tourism and leisure-related activities. Sepang Gold Coast Sdn. Bhd. (SGC), a joint venture company formed by the State Agency, Permodalan Negeri Selangor Berhad (PNSB) and Sepang Bay Sdn. Bhd., is responsible for the development of Sepang Gold Coast as Malaysia's premier international tourism destination. Sepang Local Municipal has jurisdiction over the site.

Findings and Discussion

The Reason

The 3rd National Physical arrange (NPP) emphasizes property development and planning as key principles in achieving a resilient and livable nation by 2040 inclusive of all the focuses that are Growth, Resiliency, Livability, and Sustainability. The practise of private owned beach is inextricably linked to the union development inspiration by the state and local governments in realizing 'eco-tourism' for Bagan Lalang beach re-development, which embrace development meeting sustainability. 'Eco-tourism' project is part of the Selangor Structure Plan and was translated in each Sepang Local Plan 2015 and Sepang Local Plan 2025.

From the initial assessment through EIA report on AVANI SGC project, it was transparent that the state government may benefit financially in terms of taxes, permit, or licence fee which are associated with any property developments in the country for the 'proposed Project Implementation'. The practice of granting proprietorship on beach, to some extent, provides relief towards government constraints on budget and officers in maintaining the beach. Research found that AVANI SGC has contributed to a number of tourists, income, and local employment, as in Table 2:

Table 2: Contribution for AVANI SGC from Year 2016 to 2020.

Year	Number of Guest Received (People)	Income Per Year (RM)	Total Employee (People)	Total Local Employment (People)
2016	144,997	47,227,804.00	408	406
2017	160,948	47,554,575.00	390	388
2018	157,298	45,260,262.00	377	375
2019	146,759	42,617,297.00	359	357
2020	62,413	15,775,316.00	268	266

Source: Sepang Gold Coast Sdn Bhd (2021).

This research found that AVANI SGC has delivers its promise in giving a high number of tourists and generate economy to the state. Although there is an inclination in the number of guests and income, this is due to growing of tourism industry that is becoming more competitive. The inclination in employment is due to restructuring as per company performance. However, AVANI SGC remained in giving priority to local employment in job creation. Tremendous inclination in 2020 was found due to the COVID-19 pandemic, which is affecting almost all tourism activities globally. Given the fact AVANI SGC has been given a 5S rating which comprises a component of qualitative and aesthetic requirements, common

areas, bedrooms, services, safety and hygiene, and staff (Ministry of Tourism, Arts and Culture, 2019), it has ensured the environment to preserve in a well clean manner. Thus, the existence of AVANI SGC has met requirements from the state government in environment, economy, and positive social contribution.

The Administration Practice

The establishment of the 'joint venture' company to execute redevelopment of Bagan Lalang beach was in need due to constraint of budget to finance the development project as well as its maintenance. Aside from that, certain process in the re-development requires special skills and techniques that is not available in public sector. The 'joint venture' relationship is translated in Figure 2.

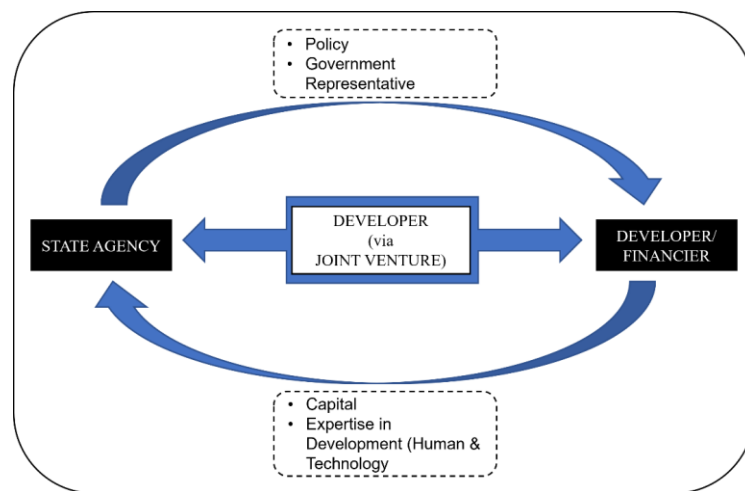


Figure 2: Joint Venture Model Between State Agency and Developer in SGC Sdn. Bhd., the Owner of AVANI SGC.

Source: Adopted from the researcher.

Conversely, the 'joint venture' formation is highly regarded by the other party as they require in-house knowledge by public sector to understand government policies, regulations, and guidelines. In this sense, government agency is considered as strategic partner in development industry. Likewise, Selangor Director of Lands and Mines released Circular No. 14/2010 on '*Panduan Pemberilikan Tanah Dasar Laut Bagi Tujuan Pembangunan Di Atas Air Di Negeri Selangor*' (Guide to the Acquisition of Seabed Land for the Purpose of Development on Water in the State of Selangor) to enable redevelopment of Bagan Lalang beach by SGC to be materialized. According to this guideline, the seabed ownership is granted for a period not exceeding 99 years with reference to Section 76 of NLC 1965.

The procedure of obtaining developing beach land is like those of other types of development on land other than beaches. However, the study concludes that private beach ownership should be considered differently from regular land ownership because beach land contains natural resources that are valuable in providing tangible and intangible benefits. Key informants agree that diminishing beach area that can be accessed and enjoyed for public recreation resulted from development activity could rise issue on beach sustainability which would result in fewer public beaches for future generations. In addition, the government's portion of state land and control and command over beach land would be weakened because of 'privatizing' practice and non-strategic management, such found in Subramorey (2015).

Uptake for Public Access to the Beach

The Selangor Director of Lands and Mines Circular No. 14/2010, which governs the process of seabed land ownership applications had imposed several development condition and social protections was only given to the fishermen's community. The circular also was found to imposed non-restriction of access only for boat, canoe, and other means of water vehicles. From in-dept interview, access for public to AVANI SGC beach was given based on 'open-door-policy' by the developer. Although it was found unwritten, state agency's interest in the 'joint venture' provides mutual agreement on this issue.

Prior to the Circular No. 14/2010, the State Executive Meeting (SEM) had imposed several conditions in its earliest decision for AVANI SGC project in year 2004, including identifying and providing public beaches in the development area, in addition to granting the land for development. In this instance, SEM's decision could provide a foundation for protecting the public's interests on the beach. This protection, however, is not conclusive as SEM decisions can be reversed or altered. The case of *Kurun Maksima Pte Ltd v Port Dickson District Land Administration and Others (2015)* illustrates example on revocation of SEM decision.

Even though Circular No. 14/2010 indicated that a Social Impact Assessment (SIA) must be carried as part of project clearance, the development of AVANI SGC was carried by absent of SIA protocols. The method of SIA is important as it demonstrates and connect social demands and ecosystem services (Yap & Leow, 2019). SIA is not conducted in AVANI SGC development at Bagan Lalang as the Selangor government has mandated SIA in development activity commencing in year 2019.

The Circular No. 14/2010 was also found silent in any intention of gazetting beach for the public or public access to the beach. A cross-examination with Sepang Local Plan 2025 found that the government's intention regarding gazetting area of water bodies is excludes beaches. The Local Government, through Sepang Local Plan 2025 indicate intention to gazette water body that covers river, ponds resulted from mining activity (individual land or government land) artificial and natural ponds and catchment ponds. The gazetted is intended to control and enable enforcement to be carried out as well facilitate monitoring and other responsibilities and actions by the agencies involved.

Summary of Analysis

From findings and discussion, the analysis can be summarized using Strength, Weakness, Opportunity, Threat (SWOT) tool. SWOT Analysis is one of the renowned tools for analysis that is also used in beach management (Praveena et al., 2018). The key purpose of using SWOT Analysis is to identify the strategies that will create a strong business model that will best align organization resources and capabilities to the requirements of the environment in which the organization operates. The SWOT analysis for government practice in private ownership that implicates public access is presented in Table 3.

Table 3: SWOT Analysis for Government Practice in Private Ownership that Implicate Public Access on the Beach.

	Helpful To achieving objective	Harmful To achieving objective
Internal Origin (Attributes of the organisation)	Strengths (SI)	Weaknesses (WI)
	<ul style="list-style-type: none"> Joint venture practice for eco-tourism 	<ul style="list-style-type: none"> Finance capital Human resource/ expertise Technology
External Origin (Attributes of the environment)	Opportunities (OE)	Threats (TE)
	<ul style="list-style-type: none"> Economy Social Environment 	<ul style="list-style-type: none"> State land State control Public beach

Source: Adopted from the researcher.

From the SWOT analysis, finance capital and human resource are recognized under 'Weakness Inside Organization' (WI) that led to government practice on ownership on the beach by private party. If government decide that beaches cannot be privatized such practice is not to be practiced, the government must have sufficient finance and human resource in administering and managing beach development. This includes sufficient finance capital for upgrading and maintaining physical development, preservation of natural resources from any impacts/effects by humans or nature, and technology for beach development. In terms of expertise in development, the government needs to build up or invest human capital for 'in-house' expertise specializing in the eco-tourism development plan. With that, the government will need not depend on outside resources, especially consultants or developers. Furthermore, with WI is being tackled, the government can overcome 'Threats Outside Organization' (TE) issues on shrinking of state land, retaining state control over land, and protect public beaches from being diminished and subsequently closing gap issue on public access to the beach.

The practice of joint venture (JV) for eco-tourism (SI) however, was found as a great strength in the practice as it could give benefits in economy, social and environment (OE). This practice of JV is saving the government from all costs it must bear in beach development. With government interference as a partner in JV organization, the government still has power and wisdom to protect society's interest on the beach, through their mutual agreement between partners (government and developer). Technology and expertise brought by another partner in JV could aid the government to realize beach development without compromising the environment quality and coastal process for beach recreation, thus adhere both sustainable and tourism needs.

Recommendation

From the whole discussion and analysis, in order to improve government practice on private ownership on the beach that implicates public access on the beach, it is submitted that the government needs to give substantial attention to the need of good governance in managing beach. In the spirit of strong protection for public and beaches, and standard governance on beaches to include all tiers of government to mutually plan for beach sustainability, especially for public usage, Article 76 of FC is suggested to be incited, enabling the parliament to make specific law on beach for uniformity. This research also recommends that Paragraph 25A,

List 1 of Ninth Schedule (Tourism) and paragraph 5, List III, Ninth Schedule, Concurrent List on Town and Planning, be incited for co-operation between state and federal, as well as local government.

Conclusion

The issue of public beach access in local context has existed for decades and should not be prolonged. This issue must be addressed holistically by all levels of government to avoid the future depletion of beaches for public access and to ensure their long-term use. This research is beneficial for Malaysian administrators and professionals in planning to gain a better understanding of the implication of private ownership on beach practices for public access on the beach. The result will hopefully help planners and decision makers to plan and improve decision making in beach development consisting of private ownership to safeguard public access to the beach and preserve the sustainable use of the beach. This research also relates to the government's land policy, the 3rd National Physical Plan (NPP-3), which emphasizes sustainable development and planning as a key principle in achieving a resilient and liveable nation in 2040. For future research, it is proposed that study on public perception on private ownership on beach to be undertaken.

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Tanah Dasar Laut Bagi Tujuan Pembangunan Di Atas Air Di Negeri Selangor*