

THE PRACTICE OF PRIVATE OWNERSHIP ON THE BEACH AND
IMPLICATION TOWARDS PUBLIC ACCESS TO THE BEACH

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DEDICATION

First of all, I extend my complete gratitude to Allah s.w.t, for His grace and love; I was able to end this academic journey. Al-Jabbar, the Almighty, is always with me, removes me from various deadlocks, and facilitates multiple affairs. Alhamdulillah for all forms of goodness and success in this journey. Allah Mustaan.

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ABSTRACT

Planning plays an important role in determining if development on beaches is permitted. The study focuses on access to public beaches, particularly private beaches. The presence of a private beach has created a problem on public access to the beach due to the practice of private ownership by the government. The scenario on the practice of private beach has been established in the global tourism landscape but is still a relatively new concept in Malaysia, thus, the effect on public access is rarely being researched. This research focused on four objectives which were to explain government practice in land administration regarding the practice of private ownership existence on beaches; to identify the challenges from the practice of private ownership on the beach that implicates public access to the beach; to recognise the relationship of private ownership on the beach with public access to the beach; and to propose suitable recommendation to the government in improving administration in private ownership on the beach without compromising public access on the beach. A qualitative methodology was adopted through a case study strategy to study this phenomenon in Avani Sepang Goldcoast (SGC) in Bagan Lalang, Sepang Selangor. Semi-structured interviews were conducted to obtain insights from local municipalities, the Sepang Municipal Council, related government agencies, the developer of Avani SGC project, and with SGC Sdn. Bhd itself. Meanwhile, the document analysis was implemented to provide further details and convergence to the findings. This research found that the practice of ‘private beach’ in Selangor exists through state land alienation and transfer to private parties for ‘eco-tourism’ redevelopment in Bagan Lalang’s coastal area, which comprises soil land and beach land and water body. Such practice explicitly institutionalised the safeguard for public access on the beach through government meeting minutes and tacitly practised through ‘joint venture company comprised of developer and state government agency. This research also found evidence limiting public access to the beach due to practice of private ownership such as physical barrier and trespass notice. However, the study also found that the restriction was necessary for the safety and security of the premises. This research managed to obtain possible recommendations to improve government practice of private ownership on the beach without compromising public access to the beach. To summarise, key informants agree that this is a complex issue that requires intense caution when considering the implications, models, and administrative processes associated with beach redevelopment. There is a need to govern the subject holistically and to have a strong mechanism and governance by states through the interference of all tiers of governments in enacting new legislation governing beach management, adding to the number of existing policies and guidelines, addressing the issue of preserving beaches for public use, and promoting the integration of a beach.

ABSTRAK

Perancangan memainkan peranan penting dalam menentukan sama ada pembangunan di pantai dibenarkan. Kajian ini memberi tumpuan kepada akses pantai awam, terutamanya pantai persendirian. Kehadiran pantai persendirian telah menimbulkan masalah akses orang ramai ke pantai berikutan amalan pemilikan persendirian oleh kerajaan. Senario mengenai amalan pantai persendirian telah diwujudkan dalam landskap pelancongan global tetapi masih merupakan konsep yang agak baru di Malaysia, justeru, kesan ke atas akses awam jarang dikaji. Penyelidikan ini tertumpu kepada empat objektif iaitu menjelaskan amalan kerajaan dalam pentadbiran tanah berhubung amalan kewujudan pemilikan swasta di pantai, untuk mengenal pasti cabaran daripada amalan pemilikan swasta di pantai yang membabitkan akses awam ke pantai, untuk memahami hubungan pemilikan persendirian di pantai dengan akses awam ke pantai dan untuk mencadangkan syor yang sesuai kepada kerajaan dalam menambah baik pentadbiran dalam pemilikan swasta di pantai tanpa menjejaskan akses awam di pantai. Metodologi kualitatif telah diguna pakai melalui strategi kajian kes untuk mengkaji fenomena ini di Avani Sepang Goldcoast (SGC) di Bagan Lalang, Sepang Selangor. Temu bual separa berstruktur telah dijalankan untuk mendapatkan pandangan daripada pihak berkuasa tempatan, Majlis Perbandaran Sepang, agensi kerajaan berkaitan, pemaju projek Avani SGC, dan bersama SGC Sdn. Bhd. Sementara itu, analisis dokumen dilaksanakan untuk menyumbang kepada perincian dan penumpuan kepada penemuan. Penyelidikan ini mendapati amalan 'pantai persendirian' di Selangor wujud melalui pengasingan tanah negeri dan pemindahan kepada pihak swasta untuk pembangunan semula 'eko-pelancongan' di kawasan pantai Bagan Lalang, yang terdiri daripada kawasan tanah, tanah pantai dan badan air. Amalan sedemikian secara eksplisit menginstitusikan perlindungan untuk akses awam di pantai melalui minit mesyuarat kerajaan dan diamalkan melalui syarikat 'usahasama' yang terdiri daripada pemaju dan agensi kerajaan negeri. Penyelidikan ini juga menemui bukti yang menghadkan akses orang ramai ke pantai kerana amalan pemilikan persendirian seperti halangan fizikal dan notis pencerobohan. Walau bagaimanapun, penyelidikan juga mendapati sekatan itu perlu demi keselamatan dan keselamatan premis. Penyelidikan ini berjaya mendapatkan cadangan untuk menambah baik amalan kerajaan terhadap pemilikan persendirian di pantai tanpa menjejaskan akses orang ramai ke pantai. Untuk meringkaskan, pemberi maklumat utama bersetuju bahawa ini adalah isu kompleks yang memerlukan pertimbangan implikasi, model dan proses pentadbiran yang berkaitan dengan pembangunan semula pantai. Terdapat keperluan untuk mentadbir subjek secara holistik dan mempunyai mekanisme dan tadbir urus yang kukuh oleh negeri melalui campur tangan semua peringkat kerajaan dalam menggubal undang-undang baharu yang mengawal pengurusan pantai, menambah bilangan dasar dan garis panduan sedia ada, menangani isu memelihara pantai untuk kegunaan awam dan menggalakkan integrasi.

TABLE OF CONTENTS

	TITLE	PAGE
	DECLARATION	iii
	DEDICATION	iv
	ACKNOWLEDGEMENT	v
	ABSTRACT	vi
	ABSTRAK	vii
	TABLE OF CONTENTS	viii
	LIST OF TABLES	xiii
	LIST OF FIGURES	xv
	LIST OF ABBREVIATIONS	xviii
	LIST OF APPENDICES	xix
CHAPTER 1	INTRODUCTION	1
1.1	Overview	1
1.2	Background of Study	1
1.3	Problem Statements	5
1.4	Research Aim	9
1.5	Research Questions	9
1.6	Research Objectives	10
1.7	Scope of Study	10
1.8	Significances of Study	12
1.9	Research Methodology	13
CHAPTER 2	BEACH AND ACCESS	15
2.1	Introduction	15
2.2	Theoretical Perspective on Land	15
2.2.1	The Concept of Land Proprietorship in Malaysia	17
2.2.1.1	State Land	18

2.2.1.2	Private Land	21
2.2.2	The Concept of Utilization of Land in Malaysia	22
2.2.2.1	Utilization of Land Under the Land Law	22
2.2.2.2	Use of Land Planning Law	23
2.2.3	Rights: Extent and Limitation on Land	27
2.3	Beach	30
2.3.1	Private Beach	32
2.3.2	Ownership on Beach in Malaysia	34
2.3.3	International Practice on Private Beach	36
2.3.4	Rights on the Beach	42
2.4.1	Public Access to the Beach	43
2.4.2	Access to Beach in Malaysia	44
2.4.3	International Application for Public Access to the Beach	47
2.4.4	Local Application for Public Access to the Beach	50
2.5	Sustainable Development to Support Function of Beach	54
2.5.1	Social Function	55
2.5.2	Economic Function	58
2.5.3	Environment Function	61
2.6	Important of Statutory Framework Governing Activities on the Beach	65
2.7	Summary	69
2.8	Chapter Summary	72
CHAPTER 3	RESEARCH METHODOLOGY	73
3.1	Introduction	73
3.2	Qualitative Approach	74
3.2.1	Phenomenology	75
3.2.1.1	Transcendental Phenomenology	76
3.2.1.2	Hermeneutic Phenomenology	77

3.3	Case Study Strategy	78
3.4	Pilot Study	79
3.5	Research Methods	82
3.5.1	Data Sources	82
3.5.2	Collection of Data	83
3.5.3	Primary Data Collection	83
3.5.3.1	Interview	84
3.5.3.2	Observation and Visual Data	85
3.5.3.3	Photography	86
3.5.4	Secondary Data Collection	87
3.5.4.1	Journal Articles	87
3.5.4.2	Newspaper Articles	88
3.5.4.3	Government Documents	89
3.6	Sampling Technique	89
3.6.1	Key Informant Interviews	90
3.7	Data Analysis	91
3.7.1	Interview Analysis	92
3.7.2	Document Analysis	92
3.7.2.1	Primary and Secondary Document Analysis	93
3.7.2.2	Document Analysis Technique	93
3.7.3	Observation Analysis	94
3.8	Trustworthiness and Credibility	94
3.9	Summary of Research Design	96
3.11	Ethical Considerations	100
3.12	Chapter Summary	100
CHAPTER 4	CASE STUDY	101
4.1	Introduction	101
4.2	Bagan Lalang Beach, Sepang Selangor	102
4.3	Case Study: AVANI Sepang Goldcoast	105
4.4	Chapter Summary	116

CHAPTER 5	DISCUSSIONS AND ANALYSIS	119
5.1	Introduction	119
5.2	Profiles of Key Informants	119
5.3	Planning as Mechanism of Change for Beach Ownership	121
5.4	Part 1: Government Experience in Practice of Private Ownership on Beach that Implicates Public Access to the Beach.	122
5.4.1	Reason by Government for Allowing Private Ownership on the Beach	122
5.4.2	State Land Alienation: The Case of AVANI Sepang Goldcoast Sdn. Bhd.	130
5.4.3	Government Uptake on Public Access on the Beach	135
5.4.4	Summary Analysis	136
5.5	Part 2: Challenges and Implications from Practice of Private Ownership on Beach: Pushing for Better Protection Towards Public Access to the Beach.	138
5.5.1	Challenges in the Practice of Private Ownership on the Beach	138
5.5.2	Implication of Private Ownership on the Beach Existence	148
5.5.3	The Need to Administer Private Ownership on the Beach	156
5.5.4	Summary Analysis	158
5.6	Part 3: Public Access on Beach: Between Developer's Policy and Reality	159
5.6.1	Uptake by Developer Regarding Public Access on Private Ownership on the Beach	160
5.6.2	Real Time Observation on Site: AVANI SGC	162
5.6.2.1	General Analysis	163
5.6.2.2	Focus Analysis	164
5.6.2.3	Selective Analysis	166
5.6.3	Summary Analysis	170
5.7	Summary Existence of AVANI SGC	171
5.8	Chapter Summary	173

CHAPTER 6	RECOMMENDATIONS	175
6.1	Introduction	175
6.3	Key Informant findings on Ways to Improved Government Practice in Private Ownership on Beach that Implicates Public Access to the Beach	177
6.4	The Need of Specific Statutory Implementation	182
6.5	Chapter Summary	184
CHAPTER 7	CONCLUSION	185
7.1	Introduction	185
7.2	Revisit Objectives Outcomes from the Research	185
7.3	Revisit Recommendation from the Research	188
7.4	Trustworthiness and Credibility in Research	189
7.5	Affirmation of Research Methodology	193
7.6	Summary Contribution of Study	194
	7.6.1 Contribution to Government and Practitioner	194
	7.6.2 Contribution to Academic Knowledge and Theory	195
7.7	Future Research	197
7.8	Chapter Summary	198
REFERENCES		199
APPENDICES		217
LIST OF PUBLICATIONS		227

LIST OF TABLES

TABLE NO.	TITLE	PAGE
Table 1.1	Comparisons between coast and beach.	2
Table 2.1	Countries adoption in protecting public access on beach.	49
Table 2.2	Summary of Research Indicators Between Beach and Access.	70
Table 3.1	Summary of Research Design for Private Ownership on the Beach Existence and Implication Towards Public Access on the Beach.	96
Table 5.1	Comparison Between ‘No Option Project’ and ‘Proposed Project Implementation’ in Bagan Lalang’s project.	124
Table 5.2	Consideration by Sepang Goldcoast for Project at Bagan Lalang.	126
Table 5.3	Contribution from AVANI SGC Existence.	129
Table 5.4	SWOT Analysis for Government Practice in Private Ownership that Implicate Public Access on the Beach.	137
Table 5.5	Considerations of Views by One Stop Centre (OSC) Committee and Other Government Agencies on Private Ownership on the Beach.	141
Table 5.6	Characteristic of Private Owned Beach According to Key Informants.	142
Table 5.7	Challenges in Practice of Private Ownership on the Beach.	145
Table 5.8	The Implications of Private Ownership on the Beach.	149
Table 5.9	Reasons by Key Informants on The Need for Private Ownership on the Beach to be Administered.	156
Table 5.10	SWOT Analysis for Government Experience in Managing Private Ownership on Beach.	158
Table 5.11	Selective Observation on AVANI SGC.	166
Table 5.12	SWOT Analysis Explaining Private Ownership on the Beach Relationship with Public Access to the Beach.	170

Table 6.1	Outcomes from Research Objectives in SWOT Analysis.	176
Table 6.2	Recommendation by Key Informants in Improving Government Practice in Private Ownership on the Beach that Implicates Public Access to the Beach.	178
Table 7.1	Triangulation of Data Analysis with Theories and Key Concepts.	190
Table 7.2	Triangulation from Data Analysis with Objectives Outcomes.	191
Table 7.3	Convergence from Research Findings.	192

LIST OF FIGURES

FIGURE NO.	TITLE	PAGE
Figure 1.1	Government intention to practice private beach activity for tourism development and tourism-themed properties in Sepang, Selangor.	7
Figure 2.1	Land Management Paradigm (Enemark, 2014).	16
Figure 2.2	Framework for the National Land Policy (M. S. Ismail, 2011b).	17
Figure 2.3	The Structure of Land Ownership Activities for Land Administration in Malaysia. (Source: Department of Director General Land and Mines (2007))	24
Figure 2.4	Beach Features. (Source: Institute of Land and Survey (INSTUN))	30
Figure 2.5	Status of Port Function Matrix by Quansah (2008).	33
Figure 2.6	Synthesis Between Ownership and Implication Towards Access on Beach. (Source: Adopted from the researcher)	71
Figure 3.1	Summary of Research Process.(Source: Adopted from the Researcher)	98
Figure 4.1	Small Planning Block for BP 8. (Source: Sepang Local Plan 2025)	102
Figure 4.2	Areas for Marina Bay Development in Bagan Lalang. (Source: Sepang Local Plan 2025)	104
Figure 4.3	AVANI Sepang Goldcoast Palm Tree Resort. (Source: Perumal et.al., (2016))	107
Figure 4.4	Location Plan of Bagan Lalang Beaches from Plot 67 (PT5247) to Plot 76 and AVANI Sepang Goldcoast. (Source: Sepang Land and District Office (2020))	108
Figure 4.5	On Site Image for Land Plot PT9113. (Source: Adopted from researcher)	109
Figure 4.6	On Site Image for Land Plot PT9115 Displaying Gazebo, Spotlight, and Beach Chairs. (Source: Adopted from researcher)	110
Figure 4.7	On Site Image for Land Plot PT9115 Displaying Kayak House. (Source: Adopted from researcher)	110

Figure 4.8	Title Plan for PT9113, PT9114 and PT9115.(Source: Sepang Land and District Office 2021)	111
Figure 4.9	Aerial Image for PT9113, PT9114 and PT9115.(Source: Satellite Map Gosur Website (2021))	111
Figure 4.10	Zoning Plan for Re-Development Beach Project Affecting Plot 67 to 76. (Source: Sepang Land Office and District Office (2020))	113
Figure 4.11	Site Plan for Re-Development Beach Project Affecting Plot 67 to 76.(Source: Sepang Land Office and District Office (2020))	113
Figure 4.12	Site Plan for Private Beach and Public Beach in Bagan Lalang, Sepang. (Source: Sepang Land Office and District Office (2020))	114
Figure 4.13	On Site Image of AVANI SGC with Fences.(Source: Adopted from researcher)	115
Figure 5.1	Joint Venture Model Between State Agency and Developer in SGC Sdn. Bhd., the Owner of AVANI SGC. (Source: Adopted from the researcher)	131
Figure 5.2	Relationship between State and Local Government for Private Ownership on Beach Practice.	134
Figure 5.3	Government’s Challenges in Private Ownership on the Beach.	147
Figure 5.4	Themes Generated for Implication from Private Ownership on the Beach.	154
Figure 5.5	Themes Generated for The Needs to Administer Private Ownership on the Beach.	157
Figure 5.6	Sports Activities Offered at AVANI SGC.(Source: Adopt from the Researcher)	161
Figure 5.7	SPA Treatment Offered at AVANI SGC.(Source: Adopt from the Researcher)	162
Figure 5.8	The Condition of the Beach Area at AVANI SGC at Around 11.45 a.m. on 21/02/2021.(Source: Adopt from the Researcher)	163
Figure 5.9	The Condition on the Public Beach Area (Plot 68) Next to AVANI SGC at Around 11.45 a.m. on 21/02/2021.(Source: Adopt from the Researcher)	164
Figure 5.10	The Condition on AVANI SGC Beach at Around 11.34 a.m. on 25/02/2021 from Plot 68.(Source: Adopt from the Researcher)	164

Figure 5.11	The Condition on AVANI SGC Beach at Around 5.15 p.m. on 25/02/2021 from Plot 68.(Source: Adopt from the Researcher)	165
Figure 5.12	Groins on AVANI SGC Area.	166
Figure 5.13	Fences Built at AVANI SGC Area.	167
Figure 5.14	Guard House at Main Entrance AVANI SGC Area.	167
Figure 5.15	Gate and No Entry Signage at AVANI SGC Area.	168
Figure 5.16	Access Signage on AVANI SGC Area.	168
Figure 5.17	How Private Ownership on the Beach Could Implicate Public Access to the Beach.	169
Figure 5.18	Summary Process for AVANI SGC Existence in Bagan Lalang, Sepang, Selangor.	172
Figure 6.1	Generated Themes for Recommendations from Key Informants.	180
Figure 7.1	Framework on Theory's Contribution (Kilduff et al., 2011).	196
Figure 7.2	Conceptual Framework on Sustainable Ownership on the Beach from Research. This is a Sustainable Consideration for Land Disposal (Include Beach) that Government Manages.	197

LIST OF ABBREVIATIONS

FC	-	Federal Constitution
NLC	-	National Land Code
NPP	-	National Physical Plan
SP	-	Structure Plan
LP	-	Local Plan
SEM	-	State Executive Meeting
OSC	-	One Stop Centre
SMC	-	Selangor Municipal Council
PNSB	-	Permodalan Negeri Selangor Berhad
SGC	-	Selangor Goldcoast Sdn. Bhd.
SA	-	State Authority
LA	-	Local Authority

LIST OF APPENDICES

APPENDIX	TITLE	PAGE
Appendix A	Land Use Plan (Sepang Local Plan 2025).	217
Appendix B	Land Zoning for BP 8 Sungai Pelek (Sepang Local Plan 2025).	218
Appendix C	Permitted Land Use for BP8 Sungai Pelek.	219
Appendix D	AVANI SGC Hotel's Rating (Sepang Local Plan 2025)	220
Appendix E	AVANI SGC through LIDAR System, Courtesy from JUPEM, Malaysia (as of 19 August, 2021)	221
Appendix F	Key Informant's Group and Label.	224
Appendix G	Key Informant's Background.	225

CHAPTER 1

INTRODUCTION

1.1 Overview

This chapter explains the whole idea of the thesis through its research background. The background of the study is central to the subject of the research, which is the beach. A brief comparison between coast and beach presents how research on the beach is slightly different from the coast, although both are somehow intertwined. Beside explaining numerous rights attached to the beach, this chapter also briefly explain local civil land theoretical framework including right of way and waqf application which related to access to the beach in Malaysia. This problem statement in this chapter will explain the needs for the study. This chapter determines its investigation through research aim, objectives, and research questions. The scope of the study described the research parameter, while the significances of the study demonstrate the benefit from research. The research strategy explains briefly in part research methodology that presents in this introductory chapter.

1.2 Background of Study

Traditionally, beach functions are centered on fisheries wherever it supplies financial gain to the folks living on the coast by fishers, boat operators, and snail collectors (Ismail et al., 2000). Beaches activities are resulted from the aesthetic worth and natural resources contained inside it and later developed into an economic activity that is vital as a part of the financial supply of the country, such as the tourism trade activities across the country and globally. Study on the beach per se,

although acknowledged in history within coastal land, has received attention in many aspects such as science, earth, economic and social.

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 1.1 can explain brief comparisons between coast and beach.

Table 1.1 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.

The growth and evolution of beach recreation in tourism trade activities have attracted varied development projects on the land, from the transformation of beach in terms of its beautification to the development of residential and industrial buildings in coastal space and reclamation land. Effect on beaches area has attracted various interested parties such as:

- i. A complex private-common property rights (Hubbard, 2019).
- ii. Place for human rights and political agenda (Daughterity, 2019; Hartley & Green, 2006; Weiss, 2016).
- iii. Attract investors for developments (Abdullah & Loi, 1992; Abidin et al., 2003)
- iv. Benefit for the tourism industry (Jahi, 2009).
- v. Place for public enjoyment (S. Ismail et al., 2000).
- vi. Research area for studies (Dada, et al., 2012); and
- vii. Agent for quality of live improvement (Gascon, et al., 2017; Pasanen et al., 2019).

Beach development has evolved from traditional use to the needs of global tourism. The trajectory has induced the evolution of beach land use, activities and recreation, growth of development around the beach area, and economic growth. The growth and change on beaches don't seem isolated but interconnected with land rights that significantly impact beach development. The ineffective management of rights and resources on the beach could defeat its primary objectives: preserving its natural resource and economic advantage underneath a sustainable paradigm. These led to innovation in beach management, from sole government management to public-private management or complete privatization.

Previous research has brought world-scale attention regarding private nature's existence in development on the beach. It has acquired multidiscipline concerns from coastal management (Ozalp & Akinci, 2016), environment (Summerlin, 1996; Mohamed & Razman, 2018), jurisprudence (Kim et al., 2019), economic and political (Keul, 2015) as well as legal (Gilbert & Finnell, 1989; Hubbard, 2019; Wruck, 2019).

It is important to note that governments or public authorities are budget restricted but with broader interests and social responsibilities that may not cope with the ever-changing world of nature in beach development and beach preferences in the tourism industry. Yet, the exploration of this resource is essential in enhancing social and economic activities. Although less inquiry in deep analysis, the practice's

success in development on the beach currently functions as a benchmark applied to a different country as best management. However, the trend of private beach facilitates the evolution of beach development (Ávila-garcía & Sánchez, 2015; McKinsey & Company, 2017). It prevents overcrowding and damage to natural resources, the evolution of government management style, ecological conversation, the creation of job opportunities, and different types of entertainment offered on the beach through high-end tourism.

Due to the evolution that supports tourism, beaches are luring under development values, such as the post-modern urbanization period (Subramoney, 2015) and the neo-liberal approach (Keul, 2015). The commodification of beaches to support development values and land alienation has shifted beach identity from owned and managed by the state to private ownership and management. The shifting of beach ownership inevitably affects one of its stakeholders, the beach user, regarding its access between public and private land boundaries.

Public access to the beach is a debatable rights issue arising due to private ownership practice on the beach. The application of such right exists either safeguarded by the established constitution like the Public Trust Doctrine adopted in the United States of America. Public access to beaches also arguably exists naturally embedded in law by a country that did not have written law on such doctrine as Canada adopted.

In Malaysia, theoretically, all land belongs to the state as entrenched in Section 5 of National Land Code 1965, which land that has not been alienated, declared as reserved land or mining land. The land administration organizational structure in Malaysia demarcates the express power to State Authority to manage land according to the Ninth Schedule in the Federal Constitution of Malaysia. However, in expressing the above theory since historical values, the paradigmatic holder of land by the state is more on possession rather than owning the land. Ownership of the land is related to the technical process of registering the owner's name on the land title. In contrast, possession of the land is connected to control of the land even without the land title.

Concerning access by the public, according to section 388 of the NLC 1965, the Land Administrator have power to create may rights of way over land, which shall be known as Land Administrator's Right of Way (LAROW). Under section 394 (4), a public right of way shall enable the public to pass and repass between any specified land area and a public terminal. According to section 397, "public terminal" was defined as the foreshore, river, railway station, or public road.

On another note, public access to the beach can be safeguarded through the practice of waqf. According to the Wakaf (State of Selangor) Enactment 1999, waqf means the surrender of any property that can enjoy its benefits or benefits for any charitable purpose. Waqf can be either a general waqf or a special waqf, according to Hukum Syarak but does not include trusts as defined under the Holders Act Trust 1949 [Act 208]. However, according to Puad et al., (2020), among the constraints faced by the Selangor Islamic Religious Council (MAIS) is the lack of experts in technical and professional aspects related to waqf matters which includes fields of shariah, the law as well as investment and land development. Nevertheless, protecting public access on the beach through waqf land, including beach land, is in line with the paramount aim in waqf practice which is to benefit the public in general.

1.3 Problem Statements

Traditionally, a beach is a public place used for recreational purposes for family union or a favorite place for enjoying the aesthetic view of the beach, sea bathing, and other varied activities regardless of walking (S. Ismail et al., 2000). These traditional activities attracted different demographic of beach users, from local people to the royal family (Sultan et al., 2016). Beach is an accessory that is seen as an attribute to the tourism sector that contributes to the generation of the country's economy (Hossain, 2019). Apart from economic importance, the physical of this natural resource, such as the blue view, sandy beach, mist of sea breeze linger on it, have contributed to a better quality of life to humans by providing positive psychological impact to humans such as meditative effect (Pasanen et al., 2019).

These days, the beaches have not been spared from changes in many forms due to the pressure of development and sparks problem to this precious resources. 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).

Private beach and public access studies are growing works of literature in global setting multidiscipline. 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; Payus & Nandini, 2014; Nair et al., 2016). However, no specific studies on this matter have been carried out to understand this nature in the local context.

In a retrieved government document of Sepang Local Plan 2015 (JPBD, 2012), that made to the public, government practice to allow the existence of private beaches was found under tourism development and tourism-themed properties in the local plan as in Figure 1.1

SELANGOR 2015
Rancangan Tempatan Daerah

Jadual 6.46 :
Zon Aktiviti Pembangunan Pesisiran Pantai dan Sungai

Zon Pembangunan	Tema Pembangunan	Aktiviti
Zon A Sg. Sepang Kecil	Eko-Pelancongan berciri persekitaran semula jadi sg. dan berkait dengan Pelancongan Budaya di Homestay Banghurs.	<ul style="list-style-type: none"> • Memudik sg. dengan bot/trakit. • Jeti • Memancing menggunakan bot dan rakit • Jungle trekking
Zon B Sg. Sepang Besar	Eko-Pelancongan berciri persekitaran hutan bakau dan sg. dengan pelbagai tema eko di kawasan-kawasan pusat pelancongan dan rekreasi yang telah dikenal pasti	<ul style="list-style-type: none"> • River Cruise • Jeti • Resort/Chalet • Boutique Resort • Pusat aktiviti berkaitan pelancongan eko • Menemak udang • Memancing • Restoran
Zon C Pantai Pelancongan Tanjung Tumbak	Pembangunan pelancongan dan hartanah bertema pelancongan	<ul style="list-style-type: none"> • Pantai persendirian • Resort dan kemudahan pelancongan tahap tinggi • Kondominium Servis/Kondominium • Marina
Zon D Pantai Rekreasi	Pelancongan dan rekreasi pantai awam	<ul style="list-style-type: none"> • Pantai rekreasi awam dan kemudahan berkaitan dengannya seperti tapak perkhemahan. • Resort dan kemudahan pelancongan bertaraf sederhana
Zon E Delta Bagan Lalang	Pembangunan berkaitan pendidikan delta dan khazanah geologi serta aktiviti pelancongan 'low-key low impact' menerapkan identiti tempatan	<ul style="list-style-type: none"> • Chalet • Hotel dengan kemudahan untuk program Meeting, Incentives, Conventions, Exhibitions (MICE). • Tapak perkhemahan • Pusat pendidikan geologi dan geomorfologi delta • Boardwalk ke laut/zon delta • Menunggang kuda • Bermain layang-layang di pantai • Medan ikan bakar

Sumber: Kajian Rancangan Tempatan Daerah Sepang, 2015

Figure 1.1 Government intention to practice private beach activity for tourism development and tourism-themed properties in Sepang, Selangor.
Source: Sepang Local plan 2015.

Such publication is a testament to corroborate the existence of private-owned (*pantai persendirian*) beach in Malaysia. Prior to inserting the practice in Sepang Local Plan 2015, the State of Selangor has decided to perform eco-tourism development in Bagan Lalang, Sepang Selangor coastal area through State Executive Meeting (SEM/ MMKN) in the year 2004. 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).

Beaches in Bagan Lalang are overrun by private development plans that have been inspired by State and Local Government development agendas. Due to the development, the beach in the area has 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.

To this date, Malaysia is yet to own specific statutory law on beach. Despite the absent of such specific law, as land administration is in the purview of state government, State of Selangor has come out with guideline on transfer of seabed land to enable practice of private ownership on beach. This practice inevitably had put dilemma of local standing for public access to the beach as the rights to exclude by a private owner of the land is recognized under the perspective of land and property law, (*Lee Hay vs. Yang Di Pertua Majlis Daerah, Hulu Langat & Anor* [1998]).

As this research focuses on civil land administration in private ownership on the beach, this research concludes the problem arises that if disposal of state land is not controlled with strategic practice, it would not only shrinking state land and weaken the government's dominance over the land (Subramoney, 2015) but inevitably giving a challenge for the state to preserve their power on beach and coastal land, thus resulting in challenges in preserving right for public access to the beach. The other risk associated with this practice would be achieving and realizing the vision of integrated management in coastal areas (Abdullah, 1999), as well as to sustainably maintaining and protecting public interest to the beach.

1.4 Research Aim

This research aims to provide understanding to the government on real-context research-based matters related to private ownership on the beach and the implications towards public access to the beach. This research assisted in critically examining the present model/ modus for land disposal comprised on beach land and water body and discuss the implication towards public access to the beach. In furtherance to this, this research presented challenges pertaining to ownership issues in beach re-development and forwarding proposals for a better action plan by all tiers of government in improving planning and land administration in beach re-development.

1.5 Research Questions

There are three research questions of this research which are:

- i. What is the State of Selangor government's practice in land administration regarding practice of private ownership existence on beach?
- ii. What is/are challenge/s faced by government from practice of private ownership on beach?
- iii. How practice of private ownership on beach is explained regarding implication on public access to the beach?
- iv. What is/are suitable recommendation/s to the government in improving administration in private ownership on beach without compromising public access on beach?

1.6 Research Objectives

This research consists of three main objectives, which are:

- i. To explain State of Selangor government practice in land administration regarding practice of private ownership existence on beach.
- ii. To identify the challenges from practice of private ownership on beach that implicates public access to beach.
- iii. To explain the practice of private ownership on beach relationship towards public access to the beach.
- iv. To propose suitable recommendation to the government in improving administration in private ownership on beach without compromising public access on beach.

1.7 Scope of Study

Studies related to private ownership on the beaches are well-established in constitutional rights and judicial taking. The significance of the public access on the beach because of private ownership of beach existence by countries that did not embody any legal rights for public access on the beach is slight in exploration. Thus, this research undertook to explore the nature of private ownership on the beach under the context of government practice which is still in the small number of research for benchmarking purposes (Ávila-garcía & Sánchez, 2015).

This study is also limited to the practice of land administration by the State of Selangor that owns specific guidelines regarding its coastal management and disposal of seabed plots of land. However, land management is also being discussed in the theoretical part in supporting the need to have good management in land administration to support the paradigm theory of sustainable development. As land matters fall under state jurisdiction according to the Federal Constitution, comparison with other states could be complex for the nature of research. Therefore, the first objective is limited to State of Selangor practice on seabed land ownership pursuant

to section 76 of NLC 1965 and Selangor Director of Lands and Mines Circular No. 14/2010.

This research is limited to the area of civil land administration with heavy discussion on ownership model/ modus for land, including a portion of beach which formed by established development on the beach. Thus, AVANI Sepang Goldcoast has been chosen as a case study sample due to the unique nature of the research (Yin, 2014) and is the only state land in Selangor include the beach, that successfully transferred to the developer. The selection of case sites within this scope is manageable in sample size, location, and other essential resources in the research to provide discussion in the first objective.

This research is also limited to the use of non-probability and purposive sampling on selected key informants. The sampling technique was also used by other researchers (Neal, 2016; Subramoney, 2015). Local Municipal, selected government officers from related agencies gained from referral/ snowball technique as well as the developer representative were interviewed to provide primary sources that contribute to the narrative of the research. By adopting this sampling technique, this research is not supposed to generalize the population for the topic but to present empirical explanation through an explorative case study in considering presently available theories. Therefore, the second and third objective is scoped to research key informants' knowledge and experience of AVANI SGC projects.

There are various management tools available for analysis, and this research adopts and scopes its finding using SWOT (Strength, Weakness, Opportunity, Threat) analysis for beach management discussion as adopted by another research such as Sarda et al. (2015) in concluding the finding for the third objective. This research ties with the completion time frame of two years from the end year of 2019 and mid-year of 2021. Therefore, the narratives of the research were based on primary and secondary resources which are present, applicable, and valid for the period. Due to the Covid-19 pandemic and required Standard Operating Procedures (SOP), which affect live activities for general and focus observation techniques, the observation result was mainly discussed on specific observation results.

1.8 Significances of Study

The outcome of this research will enable government administrators, planners, investors, developers, and other interested stakeholders to have a higher understanding and expectations of the nature of private ownership on the beach and, therefore, the compendium that comes with it of challenges and implications. Findings from this research have enabled the discussion for suggested improvisation of current government practice and decision-making. The results of this research will expand the stakeholder views in this practice. In contrast, the recommendation from the study will address and give insights to the government on the crucial issues that are vital to be considered in formulating any plans, specific strategies, policies, regulations related to the beach, especially in deciding matters related to the beach.

The completion of achievements in research objectives presents the nexus of government practice in private ownership on the beach and the survival of public access to the beach through the approach of property development land use and planning in the beach are. This research identified the value of beach in terms of economic, environmental, and social interest, thus highlighting the vitality of having a specific statutory framework to materialize preservation and safeguarding the welfare and rights of all stakeholders and mitigating the conflict between public and private.

The research is also in line with the objective of the National Physical Plan (NPP) that includes providing physical planning plans for the implementation of sustainable development and identifying programs and critical actions to improve the spatial planning of the nation further. As NPP aims to serve as the primary reference for any planning; therefore, this research is collectively relevant to provide insight into the present trend on the practice of private ownership on the beach that needs the attention of future NPP regarding development on beach areas.

1.9 Research Methodology

This research was performed under the nature of the qualitative study as adopted by other researchers with similar study nature. The methodology process and method details are discussed in Chapter 3 of the thesis structure.

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