The Position of Islamic Law in the Legality of Land Ownership in Indonesia

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Abstract

The emergence of conflicts or land disputes is mainly caused by fighting over the status of land ownership rights. It's assumed that there is an imbalance between the concept of land law and its implementation. As a country that doesn't completely give up religious affairs as individual matters, It's necessary to consider the adoption of religious law in determining national law. So this research focuses on land law in Indonesia, the concept of land in *Madzahib al-arba'ah*, and the position of fiqh in land law in Indonesia. To support this research, a historical legal approach and a comparison of schools of thought are used to overview the evolution of land law in Indonesia and the relationship between this law and Islamic land law constructed by *madzahib al arba'ah.* The result of this research is that there are two periodizations of the development of land law: pre-independence land law and post-independence land law. Even though it has undergone a long legal evolution, inevitably, land conflicts are still developing, therefore seeing how Islamic law is in the concepts of *huquq' ainiyah* and *huquq ijtima'iyah*, of course, is oriented towards the benefit of the people above the use of the individual. So, the determination of national law should be able to adopt Islamic law as an inspiration in determining the philosophical basis of agrarian/land law.

Keywords

Islamic Law, Legality, Land Law.

INTRODUCTION

The history of human civilization shows that land is a significant factor in production (De Gregori, 1987; Masudi, 1994; Brander & Taylor, 1998). In addition to having economic value, the existence of land is also religious-cosmic (Taqiyuddin, 2004) and even ideological (Rokhmad, 2017). Soil with various contents, contents and functions is the essential factor of production. As God's creatures, humans are mandated to manage the earth and its contents in the capacity of caliphs on earth (Muhibbin, 2017). To carry out the roles of the human caliphate on earth requires the human ability to manage the earth correctly and adequately (Al Zuhaily, 1989). Normatively the world with all its potential by God is given to humans as a living facility.

In Islam, land ownership by a person in the context of an individual in social relations is legally recognized. Landowners have the authority to *use (tasarruf)* according to their wishes. Human authority over property ownership in Islamic law is protected by hifzu al-mal as one of the principles of *Al kulliyat al khams* (Bugho, 1993). Besides being an economic instrument, the land also contains social-humanistic aspects (Majah & Yazid, 2015). Therefore, Islam forbids the practice of monopoly assets (Bashir, 2002). Thus

property ownership by a person must be accompanied by moral and social responsibility (Abbasi et al., 1989).

The need for land also increases over time and the growing population and economic activities (Chen, 2007; Krugman, 2998). As a result, competition for land has become increasingly fierce and often triggers land disputes/conflicts. This fixed (limited) amount of land often struggles for land rights, starting a prolonged dispute and even bloodshed (Borras & Ross, 2007). According to Mochammad Tauhid (2009), Agrarian issues (land matters) are a matter of human life and livelihood because the land is the origin and source of food for humans. The struggle for land means the battle for food, the pillar of human life. For this reason, people are willing to shed blood and sacrifice everything that exists to maintain their next life (Cox, 1990; Peters, 2004).

In Indonesia, the Agrarian Reform Consortium referred to as KPA, noted that throughout 2018 there were 410 cases of agrarian conflict with a conflict area of 807,177,613 hectares and involving 87,568 families in various provinces in Indonesia (KPA, 2018). Meanwhile, during 2019 there were 279 cases of agrarian conflict with a conflict area of 734 thousand hectares and involving 109 thousand families (KPA, 2019). The high number of agricultural competitions is partly due to granting large-scale concessions to state and private companies on land cultivated by the community, fields, settlements, and villages with definitive status (Sita, 2014).

In Indonesia, various regulations govern agrarian issues, including Law no. 5 of 1960 concerning the fundamental agricultural law, which is referred to as UUPA or basic regulations on agricultural principles in English, regulates land to achieve the greatest prosperity of the people (Arba, 2021). Apart from this UUPA, there are also various other laws and regulations. This land regulation does not necessarily reduce the number of conflicts that occur because, in practice, decisions regarding the status of disputed lands are biased in the interests of the elite and are detrimental to the people (Rachman, 2017).
Based on these conditions and by looking at the fact that the majority of Indonesia's population is Muslim, the author is interested in studying the position of Islamic land law in Indonesian law. How is the concept of land ownership from an Islamic point of view, especially madzahib al-arba'ah, and how significant are the implications of Islamic land law in achieving community welfare?.

LITERATURE REVIEW

Land Law in Indonesia

Before Indonesia's independence, this nation had such a long history. Initially, this nation was known as Nusantara; the concept of this name was born during the reign of the Majapahit kingdom, which was the last central kingdom in the archipelago. With such long historical roots, it can be seen how the history of the law applies in the archipelago or Indonesian land. A legal history approach is needed for a variety of reasons. First, laws change not only in space and time (contextuality) but also over time. This applies to traditional legal sources. Second, legal norms are often easier to understand through understanding the law. Third, a good knowledge of legal history can be an initial guideline for law students to get to know the culture and legal intermediaries—the fourth protection of human rights (Limbong, 2012).

Land Law in Pre-Independence Indonesia

Historical records were established at the time of the Majapahit kingdom; the land belonged to the King of Majapahit in the era where the people had usufructuary rights over the land. The Majapahit Kingdom rejected someone who owned agricultural land outside without a kajan permit to protect the farmers' usufructuary rights over the ground (Muljana, 1967). The definition of the king as the embodiment of the state as the owner of the land and how to use it prevents the emergence of landlords. This thing continued until the colonial system was imposed on the ground. After Majapahit

collapsed and the Dutch controlled Indonesia through the VOC *(Verenigde Oost Indische Compagni),* the prevailing land law was Dutch colonial law. During the VOC period, many policies in agriculture were detrimental to the people; First, the contingent stipulates that the yield tax on agricultural land must be handed over to the colonial authorities, in the sense that farmers must surrender part of their harvest to the colonial government as a sign of receiving any payment. Second, *verplicht leverranten*, a provision decided by the government in the case of the colonial government with the kings regarding the responsibility to hand over all the produce of the land with a payment that has been determined unilaterally, with the stipulation that the farmers at that time could not get satisfactory results from what they have. Do. Third, *roerendienstern* is a policy on forced labor imposed on Indonesian people who are considered to have no agricultural land (Ismail, 2012).

After the end of the VOC's power, there was a change in the land ownership and control structure through land sales, resulting in the emergence of private land. This happened due to the policies issued by the Dutch East Indies government through Governor Herman Willem Deandles (1800-1811). Deals policy to sell Indonesian people's land to foreigners; Chinese, Arab and Dutch, giving rise to "private land." Land rights are eigendom lands with unique characteristics regarding the existence of state rights, called landheerlijke. Reclaim or land rights. Land rights, for example, a) The right to increase or certify ownership and dismiss the village or village head. b) The right to demand forced labor *(rodi)* or collect compensation for forced labor from the population. c) The right to collect fees, either in money or agricultural products. d) The right to establish a market. e) The right to collect fees for roads and crossings, and f) ask residents to mow the grass every three days for the landlord's needs (Santoso, 2005).

The government then passed to Governor Thomas Stanford Raffles in 1811. During the Raffles era, all government-controlled land was declared an eigendom government. Every land is subject to a land tax, better known as a land lease policy. Several provisions relating to the land tax include a) land tax is charged indirectly to the people, but the village head and the village are given the authority to determine the amount of the land tax, and b) the village is given full authority to change the land. Ownership, if this is the case. Necessary to facilitate the smooth entry of land taxes. Farmer's land can be deducted, or the farmer concerned does not fulfill the payment of land tax, c) the practice of land tax overturns the law governing the ownership of people's land as a form of power over the village. The land area should determine the amount of tax paid to the village head, but in practice, the village head has the right to determine how much the people's land tax is; the amount of rent that can be paid determines the land area. Land that can be controlled by someone (Santoso, 2005).

Then during Japanese colonialism, the land case was no better than Dutch colonialism. Land on the islands was monopolized, and all profits from it were taken to finance the Pacific War. Muhammad Hatta, at that time, continued to try to continue the idea of agricultural restructuring. In the Adat Committee, Hatta emphasized that land ownership "should not be an economic force to exploit the people." So land ownership regulations must strengthen the position of land as a source of prosperity for the people in general. For this reason, Hatta had very radical thoughts at the time, essentially limiting land ownership rights to only 5 hectares (Muallimah, 2018).

Land Rights Legislation in Post-Independence Indonesia

After Indonesia's independence, the government paid attention to the importance of laws governing property rights to land or land law. To properly regulate land rights, agrarian reform is carried out. The Minister of Home Affairs at that time abolished the privilege of the perdikan village; the *perdikan* village itself was a village that had special rights, free from payment of land taxes in recognition of the services that the previous village founders had carried out to the sultan or king who was in power at that time (Tjondronegoro & Wiradi, 2008).

Because village fiefs were deemed incompatible with the spirit of revolution, Law no. 13 of 1946 did not recognize the village head and his family to speak for all their traditional rights. According to historical rights by the village head and his family as a source of

personal income, half of the relatively large land was taken by the government and divided among the farmers who previously worked on the land as sharecroppers. In this limited land reform step, compensation in the form of monthly money for life is distributed to those who suffer from land loss (Hekmatyar & Nugroho, 2018).

Hatta's Cabinet plans to pass an agricultural law that overhauls the national land tenure structure. On May 21, 1948, the Agrarian Committee was formed through a Presidential Decree. Prime Minister Hatta stated that the committee was preparing a law on land ownership restrictions. Following the old customary law in Indonesia, the land belongs to the community. The individual can use it as much as necessary for him in his family and for as long as possible. Therefore, there is a hereditary usufructuary right, similar to private property rights. Based on the spirit of the Constitution, as broad as possible land can be cultivated by a person with his family, then the right to a large area of land must be abolished (Swasono & Ridjal, 1992).

All existing political parties fully support the land reform program because this is one of the keys to realizing a just and prosperous society. Likewise, scholars are very supportive of government programs. The scholars saw a lot of fertile lands abandoned because the owner could not manage them. Similarly, not all the land for Dutch pencils was tilled, although people did have the energy to cultivate it and desperately needed fertile soil. As for Muslims, *ihya' al-ardhil maut* (reviving abandoned land) is a noble step. Therefore, according to the Islamic view, they or those who wake the dead land are entitled to own the land (*man ahya' ardhal maut faiya lah)*. This follows the principle that only with land in a country can live, and people can live, and a nation can live. So that the manager of the dead land has a high position because it gives life to all creatures on it. Because the basis of siasyi (politics) and syar'i are fulfilled in this program, in 1960, the primary agricultural regulation (UUPA) was passed by the Gotong Royong DPR (DPRGR), chaired by KH. Zainul Arifin from the Nahdhatul Ulama Party (PNU) (Munim, 2008).

Judging from their origin, land rights are divided into two groups, namely: (1) primary land rights are land rights originating from the state. This includes property rights, land use rights, building rights on State land, and use rights on State land. (2) Secondary land rights are rights to land originating from other parties' land, including building use rights over land management rights, building use rights over property rights, use rights over land management rights, and use rights over land rights to use. . . land ownership rights, building rental rights, liens, profit-sharing business rights, boarding rights, and agricultural land rental rights (Harso, 1994).

To realize legal certainty in the land sector and provide written land law, land registration is also necessary. In article 1, Government Regulation no. 24 of 1997 states that land registration is a series of activities carried out by the government continuously, continuously and regularly, including the collection, management, bookkeeping and presentation and maintenance of physical and juridical data in the form of maps and lists of land parcels and units. . apartment units, including the issuance of proof of rights to plots of land because there are rights and ownership rights to the apartment units as well as certain rights that impose them. The objectives of land registration include: (1) Providing legal certainty and legal protection to holders of rights to a plot of land, apartment units, and other registered rights so that they can easily prove themselves as rights holders. (2) Provide information to interested parties, including the government, to quickly obtain the data needed to carry out legal actions regarding registered land parcels and apartment units. (3) Implement orderly land administration (Tehupeiory, 2012). The 1960 UUPA is arguably the most progressive regulatory product born in Indonesia. He recognized customary law based on the principle of nationalism and being pro-farmers and small people. The recognition of customary law can be seen in article 5 "Agrarian law applicable on earth, water and space is customary law, as long as it does not conflict with national and state interests, based on national unity, with Indonesian socialism. and with regulations contained in other laws, everything concerning elements that rely on religious law." Although there may be differences in interpretation and conflicts of interest between "customary law" and "national interest," "national interest" here is clarified as not threatening the sovereignty of the nation and the interests of the

people at large, not the monopoly interests of large investors who gain legitimacy from the state or ignore "national interests."
In Article 10, paragraphs 1 and 2, the hope for agrarian reform is formulated: "agricultural land must be cultivated or actively cultivated by the owner himself." In the context of structuring land tenure, this law contains provisions regarding the minimum limit of land area that can be owned by a farmer so that he can earn sufficient income to support himself and his family correctly (Article 13, paragraph 17), as well as provisions regarding land limits. Minimal area. Land that may be owned as private property (article 17) so that certain land groups can prevent the concentration of land. Article 7 contains the principle that ownership and control over land must not exceed the limit because it is detrimental to the public interest.

METHOD

The characteristic of research in law is that it contains conformity and the truth that can be accounted for. The research method is essentially used to guide the procedures for a scientist to study, analyze and understand the environments he encounters. Research, in principle, is an attempt to collect and find relationships that exist between carefully observed facts. In connection with the existing problems, the type of this research is normative and empirical. In contrast, normative research or library research examines document studies that use various secondary data such as legislation and legal theory. Empirically through research, a complete and comprehensive picture will be obtained regarding the Position of Islamic Law in the Legality of Land Ownership in Indonesia.

RESULT AND DISCUSSION

Land Jurisprudence In Madzahib Al-Arba'ah

Land jurisprudence in Islam can be defined as Islamic laws that regulate ownership rights (milkiyah), management (tasharruf), and distribution (tauzi') of land (Mahasari, 2001). This fiqh was born primarily based on the text of the Koran and historical events related to land management during the time of the Prophet and the lead after that. In addition, the context of Islamic land law is needed and encourages discourses that develop land fiqh. Various books discuss land jurisprudence from both early generation scholars, for example, Imam Abu Yusuf (d. 193 H) with his book Al-Kharaj, Imam Yahya bin Adam (d. 203 H) with his book Al-Kharaj, and Imam Abu Ubaid (d. 224 H) with his book Al-Amwal, as well as from contemporary scholars such as Abdul Qadim Zalum (d. 2003) in his book Al-Amwal fi Daulah al-Khilafah, Athif Abu Zaid Sulaiman Ali in his book Ihya` Al- Aradhi al-Mawat fi al-Islam, and Amin Syauman in his book Bahtsun fi Aqsam Al-Aradhiin fi Asy-Syariah Al-Islamiyah was Ahkamuhaa. The existence of these books indicates at least two things. First, Islam has a concern with land issues because it relates to protecting personal rights and social welfare. Second, the emergence of these books shows a development of the discourse on Islamic land law, causing the law to be non-monolithic and to vary due to methodological differences.

Ownership Philosophy

Doctrine in Islam, everything on the heavens and earth belongs to Allah SWT. Then, Allah Swt as the ultimate owner gives power (*istikhlaf*) to humans to manage this property of Allah according to His laws. Although, in essence, everything belongs only to Allah, in Islam, individual ownership by a person is also legally recognized. "Ownership" is also an essential aspect of the rule of Islamic law (*maqashidu al-shari'ah*), that's the concept of *hifdzu al-mal*.
Concerning land ownership, fiqh distinguishes land rights into two: *first,* property rights (*Haq al-milkiyyah*), also known as *milk al-raqabah,* the holders of are fully entitled to cultivate, do business, take advantage of investment, sell, give, and so forth. *Second, the* right to use (*Haq al-istighlal*), also known as *milk al-intifada,* the holder can use the land following applicable regulations, with government permission (Masudi, 1994).

Abdurrahman Al-Maliki argues according to Islamic law, and land can be owned in 6 (six) ways: (1) buying and selling, (2) inheritance, (3) grants, (4) *ihya'ul mawat* (reviving dead land), (5) *tahjir* (making boundaries on dead land), and (6) *iqtha`* (giving the state to the people) (Al Maliki, nd).

Sharing the Concept of Land Ownership

Land in Islam exists in two major building *blocks of* ownership concepts: *ist ilâ'* (control of land through war or liberation, or other means of occupation without violence) and *istiqrar* (control of land through hereditary inheritance or expert property of others by sale and purchase, and others).

Land of Istilâ' *Istilâ'* land is divided into *munihat unwatan, al-fai',* and *ardh as-sulhu.*

Munihat unwatan, an island controlled by force in a war. The status of this land becomes *ghanimah.* Based on the Koran surah al-Anfâl verse 41, the rules for dividing the ghanimah are one-fifth for Allah and Rasulullah and four-fifths "for the people."

The Prophet carried this concept consistently when he and his companions conquered/liberated the lands of Quraidhah, Nadhir and Khaibar (al-'Asqalani, 2001). However, when Rasulullah Saw. Conquering Makkah, he completely freed and returned the lands of Makkah to the local population/community. The majority of the Prophet's companions and followers of Shafi'iyyah argued that the lands of *munihat unwatan were* designated for two groups, namely *khumus* (1/5) for the religion of Allah and the struggle of the Prophet. At the same time, four-fifths (4/5) belonged to/the right of the troops involved in the war. The Malikiyyah believes that, in principle, these *unwatan lands* are waqf goods for the benefit of the people, not belonging to individuals. The results are utilized for the public benefit unless the government considers that there is another more significant general benefit. Meanwhile, according to the Hanafiyyah and Hanbaliyyah schools of thought, the status and utilization of these lands seen as unwatan were handed over to the "imam," whether they were divided or used as waqaf for public use or into cultivated land for the results or taxes were taken (*ardh al-kharaj*).

Al-fâi' is an island abandoned by its owner (fled) in a war situation (Al Husaini, nd). The land of *al-fâi'* becomes state land (*amlau ad-daulah*) for the benefit of the people, and the state can determine the lease for its taxes. The majority of fiqh scholars agree on the position of the land as waqaf for the benefit of the people at large; it's just that according to Hanfiyyah, Syafi'iyyah (following the *qaul Jadid* Imam as-Syafi'i) (An-Nawawi, 2010) and Hanbaliyyah, the donate requires the determination of the imam/ruler/state, while Malikiyyah doesn't require state interference in *al-fâi' land* (Al Mawardi, 1960).

As-Sulh, island obtained through peace negotiations. This land can become State land or remain land owned by the old owner, provided that the payment of *kharaj* (retribution) or profit-sharing is arranged by the Imam.

Istiqrâr land owned by *istiqrar is* divided into *Ardh al-mamlukâh* and *ardh al-mubâhah.*

Ardh al-mamlukâh, or land with property rights, is divided into two: a) *Ardhu al-'amirah,* an island used for settlement, agriculture and other benefits. This land is private, and other people may not manage it without the owner's permission: b) *Ardh ghâmirah* or *ardh al-khârab,* an island that's not used for settlement, agriculture or other productive purposes businesses. This land also remains the property of its owner.

Ardh al-mubâhah or land has not been assigned to the owner. According to the Malikiyyah *ardh al-mubâhah* is *ardh al-mawât.* Therefore, whoever makes a living (empowers) the dead land (neglected/neglected) automatically becomes the landowner. This is based on the universality of the hadith, " *Man ahya ardhan mayyitan fahiya lahu laisa li 'irqi dhâliman fîhi haqqun."* (Whoever gives life to dead land is the landowner; there is no right for those who neglect it.)

However, according to Hanafiyyah, Syafi'iyyah and Hanbaliyyah, *ardh al-mubâhah* is an island that has not been assigned its owner or is still under the control of the State/caliph. Therefore, anyone who exists on dead land doesn't automatically own the land except with the state's permission. This is based on the consideration of the hadith, *"Laisa li al-mar'i illa man thabat lust imamihi.* "There is no right for a person (in the case of unmanned land ownership) except with a government permit." According to

Hanafiyyah and Hanbaliyyah, this second hadith is stronger than the first hadith. According to the Malikiyyah, this second hadith is weaker than the first hadith. Meanwhile, according to Shafi'iyyah, these two hadiths are equally strong. Still, the first hadith in general, and the second is specific so that the second hadith *overtook* the first hadith. Furthermore, concerning *ardh al-mubâhah, the* Hanafiyyah, Syafi'iyyah and Hanbaliyyah schools determine the division of *ard al-mubâhah* into two parts: a) ***Mafâriqul-balâd,*** that's, land for public purposes, for example, cattle grazing areas, sports fields, roads and so on. b) ***Ardh al-mawât****,* dead land or land that has not been cultivated without an owner. And the government has the authority to regulate it in the interests of the public good.

Revocation of Land Rights

Islamic law stipulates that land ownership rights will be lost if the land is abandoned for three consecutive years. The state will withdraw the land and give it to others who can cultivate it (An-Nabhani, 2003).

This revocation of property rights is not limited to dead land (*mawat*) owned by *tahjir* (boundary creation) but also includes agricultural land owned by other methods based on Qiyas and, for example, owned through buying and selling, inheritance, grants, and others. The reason for legal reasons (*illat, ratio legis*) for deprivation of property rights is not the means of owning it but neglect for three years (*ta'thil al-ardh*) (An-Nabhani, 2003). The government authority over land can be exercised in several ways: ***Tahjîr,*** plots of free land that's not owned by any person or institution, fencing or by giving boundaries with the government's permission. If land like this has been left untapped for three years, the government has the right to revoke this right (An-Nawawi, 2010). ***Iqthâ***' is granting a piece of land by the state to a person or agency/institution for use. Most fiqh scholars state that *iqtha'* is limited to usage rights (*Haq al-istighlal*) and the government can withdraw this right (Masudi, 1994). Meanwhile, the Malikiyyah Madzhab has another opinion, namely, *that it* can provide property rights, and the government has no right to take it back. The *argument* used is because the *iqtha'* given by the caliphs (*khulafaurrasyidin*) to a person has never been revoked even though in the agreement it was only "granting usufructuary rights" (*Haq al-istighlâl*), not "giving of property rights" (Zarqa,' 1967). ***Irtifâq,*** are the beneficiary of a plot of land, especially those with shared needs, such as roads, bridges, streams and others. The right of use lies in the land *and sich* and not on a particular person or institution. So it lasts longer even though It's not proprietary. This is intended to distinguish from *haq al-istighlâl,* or *haq al-iqthâ'* is more directed at a person or institution. ***Himma,*** island or territory designated explicitly by the state for particular interests, not to be used by individuals. For example, determining *hima* for a specific mine, say the gold and silver mine in Papua, specifically to buy alutsista (the primary weaponry system).

The Position of Islamic Law in the Legality of Land Ownership

Fiqh land in Islam, or fiqh al-Arba'ah Mazahib, has a universal nature; people of Islam itself have used the universal nature of jurisprudence land since Islam entered Indonesia or exactly when the people of Islam and its teachings remain in Indonesia.

Ownership of land in society, if related to the economy, has an important position; Sahal Mahfudh (1994) quoted a statement from Imam Abu Muhammad Al-Hubaisyi that there are three primary sources of economic resources: Agriculture, Industry, and Trade. Thus agriculture is one of the essential factors in the economy regarding land ownership, so It's not surprising that land ownership is significant and very strategic.

In all of its teachings, Islam rests on achieving benefit in a person's life, is valuable, and can bring goodness to many people (Ya'fie, 1994). The manifestation of this benefIt's illustrated through the taklif (legal release) pattern. Then established the concepts of Fardhu Ain and Fardhu Kifayah. And there is also a division between Huquq áiniyah (individual rights) and *huquq ijtima'íyah* (community rights). This is proof that Islam pays fairly balanced attention to the interests of the individual and the interests of society and that the interests of the community/general are placed first.

The application of law in Indonesia adopts the legal system of the Netherlands. This is a result of Indonesia being colonized by the Dutch; however, according to Qodry Azizi, although the Dutch once colonized Indonesia, the application of law in Indonesia did not entirely adopt the legal system from the Netherlands. In short, if you do not embrace the flow of *Legalism,* Indonesia adheres to the flow of *reschtsvinding-plus* or *Legal-realism-plus.* This expression means that the legal system applied in Indonesia departs from the current reality and is then drawn into a form of legislation.

This is in line with the concept in fik is *haqikatud-din fi adyan la fi atyan, which* means that laws are made by looking at reality and then drawn into a rule, not by creating rules then enforcing their application to the people (Azizy, 2004). He also said that National law comes from modern law, custom and also religion; this is in line with what Von Sapigny meant, who said *das Recht wird nich gemacht, es ist und wird mit dem volke* (law is not made, he exist and be one with the nation). As a single godly country, the state should not deny religious laws.

In Islam, there is a *Maslahah Dururiyah* concept that includes five basic needs that must be protected, among others: *hifz ad-din* (maintenance of religion), *hifz and-nafs* (maintenance of the soul), *hifz al-'aql* (maintenance of reason), *hifz an-nasl* (maintenance of descendants), and *hifz al-maal* (maintenance of property). In the context of broadening the understanding of the concept of *hifz al-maal,* it can be interpreted that social assistance, economic development, regulation of money flows, fair economic distribution and also safeguarding of the environment, such as the need for forest conservation, clearing illegal land, controlling HPH, prohibiting illegal logging, are part of than *hifz al-maal* (Jamaa, 2013).

The existence of UUPA in the country of Indonesia should be a principal asset for regulating agrarian law in Indonesia has a priority on welfare, prosperity and justice for society. But unfortunately, the incarnation of the UUPA by the ruling government in historical records is very far from the objectives contained in the UUPA, so agrarian law rules are far from adequate. Therefore, the government should seek or reformulate a philosophical basis for agricultural law to become the basis for a development strategy and is oriented towards mutual benefit.

Placement of the philosophical basis of agrarian law should see a *maqashid syari'ah* concept and arrange a priority scale for each policy based on the community's needs. The categories of *dharury, hajiy,* and *tahsiny* can be adopted in determining the basis of agricultural law to map short, medium and long-term development programs and the foundation for development that prioritizes public than personal or group interests. It's like adapting the language of Abdurrahman Wahid, that Religious Law should be an inspiration in the stipulation of National Law.

The protection of the right to life and the right to work, providing the means to fulfill basic needs sourced from the land, and the development of a just economy, can be formulated by making it a top priority for national development. Neglect of this aspect results in a prolonged and never-ending social conflict. The government must firmly take sides in efforts to fulfill citizens' basic needs by formulating populist policies that favor the public interest. The economic development strategy must not ignore or even defeat the fulfillment of citizens' rights to life and work. The government's inherent obligation is to make policies oriented to the public benefit.

CONCLUSION

Indonesia is not a religious state and not a secular state; Indonesia affirms itself as a Pancasila state. Therefore, in its first precepts, it clearly states "God Almighty" so that the state doesn't wholly eliminate religion as a matter for each individual. So that in determining the aspects of national law, religious law must be used as one of the considerations in the form of inspiration in determining the legal basis of legislation in carrying out a state order. Remember how a law should be born from seeing reality and then drawn into a mutually agreed upon the law to be implemented and obeyed. For example, in determining agrarian law, the government should consider the concept of *maqasid syari'ah* in Islam regarding the land is oriented towards the public interest. The

adoption of the concepts of *dharury, hajiy,* and *tahsiny* can be used as a source to create a basic philosophy of agrarian law that prioritizes the interests of the people than the interests of individuals or groups. Because the protection of property, in this case, the land, is the right of every individual and the government's responsibility as a policymaker.

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